

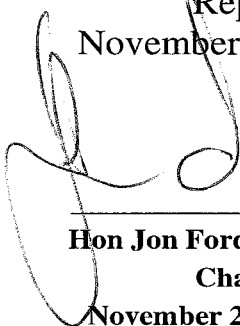


FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
ELECTORAL DISTRIBUTION REPEAL BILL 2001
AND THE
ELECTORAL AMENDMENT BILL 2001**

Presented by Hon Jon Ford MLC (Chairman)

Report 8
November 2001



Hon Jon Ford MLC
Chairman
November 26 2001

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 7 Members.
- 1.3 The functions of the Committee are -
 - (a) to consider and report on any bill referred by the House;
 - (b) to review the form and content of the statute book;
 - (c) to inquire into and report on any proposal to reform an existing law;
 - (d) to consider and report on a bill referred under SO 230 (A).
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.
- 1.5 The Committee of its own motion, or on a reference from a Minister, may inquire into and report to the House on any or all aspects, including policy, of a proposal for an agreement or arrangement that, to have effect, would necessitate the enactment of legislation of a type described in SO 2730 (A).”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)	Hon Adele Farina MLC
Hon Giz Watson MLC (Deputy Chairman)	Hon Peter Foss MLC
Hon Kate Doust MLC	Hon Paddy Embry MLC
Hon George Cash MLC (substitute member pursuant to SO 326A for Hon Bill Stretch MLC)	

Staff as at the time of this inquiry:

Louis Gargan, Committee Clerk	Lisa Hanna, Research Officer
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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

GLOSSARY

First past the post

First past the post voting usually involves single Member districts. Each voter has one vote. Each voter selects and votes for one candidate. The candidate who receives the most votes is declared elected, even if the candidate does not secure an absolute majority.

Preferential voting

There are a number of variations of preferential voting. It can be used for single or multi Member electorates and can be full preferential or optional preferential.

- Single member preferential. This is used for one Member electorates but instead of marking one name on a ballot paper when there are several candidates, a number is placed against each candidate's name indicating the elector's order of preference. If an elector's first preferred candidate is not elected and is eliminated then the second preferred choice receives that vote and so on. This is the method used in the Legislative Assembly of Western Australia.
- Single member optional preferential. Under an optional preferential voting system voters are required to number a minimum number of preferences, and have the option to number further preferences on the ballot paper if they so wish. If only one candidate is to be elected, ballot papers with only one preference indicated will be valid unlike with full preferential where voters must indicate preferences for all the candidates. The procedure for the distribution of preferences is the same as that used for full preferential voting except that where preferences can no longer be distributed, either because they are not marked or cannot be determined, the ballot paper is declared exhausted and is removed from the count.
- Multi Member preferential. This is usually called proportional voting. Each electorate has several seats to fill and they are filled according to the proportion that each candidate or party receives. The method used in the Legislative Council of Western Australia is a proportional voting system with a single transferable preferential

vote. Under this system, a candidate has to achieve a quota or proportion of the total valid vote. Votes not used to elect a candidate are transferred according to the voter's expressed preference either because their preferred candidate is elected and has a surplus to transfer, or is eliminated and all the unused votes are transferred.

- Multi Member optional preferential. This is the same as multi Member preferential except that the minimum number of preferences that must be expressed is equal to the number of candidates to be elected. Otherwise it is like single Member optional preferential.

Proportional representation

Proportional representation is a system of voting designed to produce a result which reflects in a representative assembly, as accurately as possible, the proportionate support given to parties or groups of candidates by the electorate. Proportional representation must be based on multi-Member electoral districts with either the whole state as a single district, or as sub-state electoral districts.

Single transferable vote

Single transferable vote refers to the use of preferential voting in multi-Member constituencies. Voters are required to indicate a preference for all the candidates listed on the ballot paper. Any votes surplus to a Droop quota (that is the formula used in most single transferable vote systems to allocate seats) are distributed on the basis of preferences to the remaining candidates until sufficient candidates reach the quota, and are, as a result, elected.

Quota

The number of votes that a candidate must obtain in a multi Member constituency election so as to be elected. In Australia the usual formula is called the Droop quota. It can be stated as:

$$\frac{\text{Total number of formal votes}}{\text{Number of seats to be filled} + 1} + 1$$

Transfer Value

Votes received by a candidate in excess of the quota are transferred by transferring all the *ballot papers* received by the candidate but by distributing the value of the excess *votes* they represent in the proportion that the whole number of the successful candidate's supporters are divided. This reduced value is called the transfer value.

COG

The Commission on Government was established in response to a recommendation made by the Royal Commission into Commercial Activities of Government and Other Matters. The *Commission On Government Act 1994* was passed by the Western Australian Parliament in 1994 and the Commission, comprising a full time Chairperson and four part time Commissioners, was appointed in November 1994.

The COG Report

A series of five reports prepared by the Commission on Government between August 1995 and August 1996.

WAEC

The Western Australian Electoral Commission

AEC

The Australian Electoral Commission

The Liberal Party

The Western Australian Parliamentary Members of the Liberal Party of Australia.

The Liberal Party of Australia (Western Australian Division) Inc

The official Western Australian State organisation of the Liberal Party of Australia.

The Labor Party

The Western Australian Branch of the Australian Labor Party.

Pastoralists and Graziers' Association

PGA

Western Australian Farmers Federation

WAFF

Country Shire Councils' Association of WA

CSCA

RECOMMENDATIONS

RECOMMENDATIONS

- 1 Recommendations are grouped as they appear in the text at the page number indicated:

Page 24

Recommendation 1: The Committee recommends that the Electoral Amendment Bill 2001 include an amendment to cause redistributions to occur as soon as practicable, two years after the polling day for each general election for the Legislative Assembly, by deleting section 16F in Clause 4 and substituting a replacement as in Appendix 2.

Page 24

Recommendation 2: The Committee recommends that section 16H in Clause 4 of the Electoral Amendment Bill 2001 be deleted.

Page 24

Recommendation 3: The Committee recommends that paragraph (f) in proposed section 16L in Clause 4 of the Electoral Amendment Bill 2001 be amended to insert at the end “but not so as to make a forward projection of elector numbers” as set out in Appendix 2.

Page 24

Recommendation 4: Subject to recommendations 1, 2 and 3 the Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) recommends that the Electoral Amendment Bill 2001 be passed with the amendments as set out in Appendix 2.

Page 24

Recommendation 5: The Committee by a majority (Hons Peter Foss, George Cash, Giz Watson and Paddy Embry MLCs) recommends that the Legislative Council take measures to ensure that prior to the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 coming into effect that the question whether it is lawful for the Clerk to present the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 for the Royal Assent unless the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 have been passed by an absolute majority of both Houses on the second and third readings be determined by the Full Court of the Supreme Court of Western Australia.

Page 25

Recommendation 6: The Committee by a majority (Hons Kate Doust, Adele Farina and Giz Watson MLCs) recommends that the Electoral Distribution Repeal Bill 2001 be passed without amendment.

Page 25

Recommendation A: A minority of the Committee (Hons Peter Foss and Paddy Embry MLCs) recommends that the Electoral Distribution Repeal Bill 2001 not be passed until Recommendation 5 has been complied with.

Page 25

Recommendation B: A minority of the Committee (Hons Peter Foss and Paddy Embry MLCs) recommends that the Electoral Amendment Bill 2001 not be passed until Recommendation 5 has been complied with.

Page 25

Recommendation C: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Distribution Repeal Bill 2001 be defeated.

Page 25

Recommendation D: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Amendment Bill 2001 be defeated.

Page 99

Recommendation 7: The Committee recommends retaining the current balance between regions based on the metropolitan areas and non metropolitan areas in the Legislative Council.

Page 99

Recommendation 8: The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina, Giz Watson and Paddy Embry MLCs) recommends that the multi-Member region based system of representation as currently exists in the Legislative Council continue.

Page 99

Recommendation 9: The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) recommends that The Greens (WA) Model for the Legislative Council be adopted.

Page 99

Recommendation E: A minority of the Committee (Hon Giz Watson MLC) recommends that the principle of regional representation be enshrined by a statement within the legislation, and that due consideration be given to the inclusion of a statement of principle within the State Constitution.

Page 100

Recommendation F: A minority of the Committee (Hons Peter Foss and George Cash MLCs) recommends that the Legislative Council return to a system of direct election of Members from 17 two Member electorates with a staggered fixed term. The term should be four years with alternate elections taking place in conjunction with local government elections.

Page 100

Recommendation G: A minority of the Committee (Hons Peter Foss and George Cash MLCs) recommends that failing the adoption of Recommendation F, the Legislative Council be elected upon the current boundaries, but that the Mining and Pastoral, Agricultural and South West Regions be divided into five, five and seven single Member provinces respectively so that those parts of Western Australia which have been deprived of meaningful representation, in some measure have that representation returned to them. The Metropolitan Regions will be elected on the same basis as currently.

Page 100

Recommendation H: A minority of the Committee (Hon Paddy Embry MLC) recommends that the status quo or current model for the Legislative Council be maintained.

Page 120

Recommendation I: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 be amalgamated.

Page 135

Recommendation J: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Distribution Bill 2001 and Electoral Amendment Bill 2001 be amended to provide that they not come into effect until they have been submitted to a referendum of the people.

Page 141

Recommendation 10: The Committee recommends that extra resources be provided to rural and remote Members in the form of extra office locations, additional staff, additional travel and accommodation allowance, and increased mobile telephone allowance.

Page 141

Recommendation 11: The Committee recommends that the research capacity of all Members be increased from a 0.4 FTE to a 1.0 FTE.

Page 141

Recommendation 12: The Committee recommends that all Members be provided with resources to establish and maintain a website.

Page 141

Recommendation 13: The Committee recommends that the administrative functions relating to Members resources be carried out by a single entity, namely the Department of Parliamentary Services subject to the determinations and recommendations of the Salaries and Allowances Tribunal.

Page 142

Recommendation 14: The Committee recommends that allowances paid to Members be reviewed following each redistribution to ensure that Members' allowances are commensurate with any variation of electoral district resulting from the redistribution.

Page 149

Recommendation 15: The Committee recommends that a parliamentary inquiry be held to consider the effectiveness of the current representation of indigenous people in the Western Australian Parliament.

Page 149

Recommendation K: A minority of the Committee (Hon Giz Watson MLC) recommends that a parliamentary inquiry be held to consider the appropriateness and methodology for representation of indigenous people, including the possibility of entrenchment, in the Western Australian Parliament.

Page 152

Recommendation 16: The Committee recommends that the Legislative Council review its standing committee advertising practices with a view to achieving greater flexibility and public participation.

Page 154

Recommendation 17: The Committee recommends that the Legislative Council consider reviewing committee hearing proceedings with a view to adopting more informal and friendly procedures, particularly when hearings are held in rural and remote areas of the State.

Page 161

Recommendation L: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that a new clause be inserted into the Electoral Amendment Bill 2001 that amends Clauses 7 and 18 of Schedule 1 to the *Electoral Act 1907* as set out in Appendix 1.

Page 163

Recommendation 18: The Committee recommends by a majority (Hons Peter Foss, George Cash, Paddy Embry and Giz Watson MLCs) that all parties publicly adopt the following principles:

- i Cabinet operates by consensus – it does not vote.
- ii In the party room, on matters where Cabinet has deliberated and its Members would be obliged to vote as a bloc, Cabinet Members may not vote (that is, a measure needs a majority of the non Cabinet party Members to pass – this is probably the best protection against domination by the Executive)
- iii In the Parliament, on any matter, a Member is entitled to vote against the party line without any penalty if the matter is of particular detriment or benefit to his or her electorate, provided that the Member informs the party room before hand of his or her intention to do so.

and that in due course the principles be enacted in legislation.

Page 164

Recommendation 19: The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) recommends that that an inquiry be held into optional voting for 16 and 17 year olds.

CHAPTER 1

INTRODUCTION AND BACKGROUND

INTRODUCTORY REMARKS

- 1.1 Due to the short timeframe for and the particularly politically contentious nature of this inquiry this report is presented in a way that departs from previous reports of the Standing Committee on Legislation (the “Committee”).
- 1.2 This report has neither been researched nor written in the manner that the Committee would have preferred, and it should not be seen as a complete or adequate investigation of the issues raised by the Bills.
- 1.3 Similarly time constraints and the failure of the Committee to reach common ground on many issues has resulted in particular chapters of the report being written by either the majority or minority of the Committee. The reader should take note that at the beginning of some chapters there is reference to those Members whose views the chapter reflects.
- 1.4 The Committee wishes to acknowledge that exceptional demands were placed on the staff both to organise the hearings and to prepare the report. They showed great efficiency and skill in responding to these demands and performed far beyond what would normally be expected of Committee staff.

REFERRAL OF THE BILLS TO THE COMMITTEE

- 1.5 On September 27 2001 the Legislative Council referred the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 (the “Bills”) to the Committee for inquiry and to report back no later than November 26 2001.
- 1.6 The motion for the referral of the Bills to the Committee stated:

“That the orders of the day for the second reading of the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001 be discharged and the Bills be referred to the Legislation Committee for inquiry and that it report the Bills to the House not later than 26 November 2001, and if the House is not sitting on that day, the report is to be presented to the President, who is to authorise its release and publication on receipt.”¹

¹ *Hansard*, Legislative Council, Thursday, September 27 2001, p. 4321.

- 1.7 Furthermore, the Legislative Council resolved to issue the following instruction to the Committee in its consideration of the Electoral Amendment Bill 2001:

“That it be an instruction to the Legislation Committee considering the Electoral Amendment Bill 2001 that the Legislation Committee have power -

- (a) *to receive and consider any proposal or submission relating to the basis upon which persons are elected to the Legislative Council, the number of members constituting the Legislative Council, and any related matters;*
- (b) *to report any findings or recommendations it desires to make arising from any proposal or submission described in (a).”²*

TIME RESTRICTIONS IMPOSED FOR THE INQUIRY

- 1.8 The Legislative Council gave the Committee approximately eight weeks in which to consider the Bills and report back to the House, which was a short timeframe given the significant nature of the reforms that are the subject of the Bills.
- 1.9 The Government has stated that the reason for the short timeframe for the inquiry is the necessity for the Bills to be passed by both Houses of Parliament prior to February 10 2002.³ It should be noted that it is unusual for the Parliament to sit during January or February in any year and, therefore, the Bills would need to be passed by both Houses of Parliament by the end of December 2001 to ensure that the deadline was met.
- 1.10 The reason given for the February 10 2002 deadline is s2A of the *Electoral Distribution Act 1947*, which relevantly states:

“2A. Requirement for division of State into electoral districts and regions

- (1) *The State shall be divided into districts and regions in accordance with this Act as soon as practicable after the day of the commencement of the Acts Amendment (Electoral Reform) Act 1987.*
- (2) *If the same division under this Act has applied in respect of 2 successive general elections for the Legislative Assembly the State shall be divided into districts and regions in accordance*

² Ibid.

³ *Hansard*, Legislative Council, Thursday, September 27 2001, pp. 4292, 4299, 4314.

with this Act as soon as practicable after the day that is one year after the polling day for the second of those general elections. ...”

- 1.11 As one of the central aims of the Bills is to repeal the *Electoral Distribution Act 1947* and change the time at, and method by, which a redistribution of State electoral boundaries takes place, it is important to the Government for its electoral reform program that a redistribution does not occur under s2A(2) of the *Electoral Distribution Act 1947* prior to the Bills being passed by both Houses of Parliament.
- 1.12 The last time that electoral boundaries were determined in Western Australia was in 1994. The formal process under the *Electoral Distribution Act 1947* commenced on June 3 1994 and culminated in the gazetting of the State’s new electoral regions and districts in Government Gazette No. 168 of November 28 1994.⁴ State general elections have been held in accordance with the 1994 redistribution of electoral boundaries on December 14 1996 and February 10 2001.⁵
- 1.13 Accordingly, pursuant to s2A(2) of the *Electoral Distribution Act 1947*, the next redistribution of electoral boundaries is due as *soon as practicable* after February 10 2002.
- 1.14 The legal meaning of the phrase “as soon as practicable” is discussed by Pearce and Geddes in their legal textbook *Statutory Interpretation in Australia*:

“This expression is a little more flexible than ‘as soon as possible’. The length of time permitted is to be judged against what is practicable from the viewpoint of the person or body who has to comply with the requirement having regard to its normal procedures and all other surrounding circumstances: Martin v Commonwealth (1975) 7 ACTR 1.”⁶

- 1.15 The Electoral Commissioner, Dr Ken Evans, gave an indication as to how the electoral redistribution may be carried out administratively after February 10 2001 in comments he made in answer to a question during the Legislative Council Estimates Committee’s hearings on Wednesday October 17 2001:

“I think “as soon as practicable” means that everyone concerned must be given time to get started. If the present Act is not repealed or the new provisions are not in place, the date is 10 February next year, and we would aim to start the distribution virtually as soon as

⁴ *Redistribution – or Division of the State*, Western Australian Electoral Commission, at Internet site: <http://www.waec.wa.gov.au/frames.asp?section=electorate>.

⁵ Ibid.

⁶ Pearce D C and Geddes R S, *Statutory Interpretation in Australia*, 5th Edition, Butterworths, 2001, p. 301.

possible. The practical arrangements are that the Chief Justice is the chairman of the commission, so he must be available for a period. We need premises, for which I am presently searching in my building, so that we can undertake this process separate from the Western Australian Electoral Commission, because it is carried out by the electoral distribution commissioners. Issues of that sort mean that the process cannot necessarily begin on 10 February, but it is anticipated that it will start within several months after that date. The Electoral Distribution Act, and the proposed amendments to the Electoral Act, both provide for this to happen within a six-month period. If the process were commenced at the beginning of May, it would be finished by the end of October.”⁷

ADVERTISEMENT CALLING FOR PUBLIC SUBMISSIONS ON THE INQUIRY

1.16 In order to facilitate public involvement in the inquiry, the Committee resolved to adopt the following interpretation of the inquiry terms of reference in its advertisement calling for public submissions:

“The Committee has resolved to conduct its inquiry into the above Bills by examining the basis upon which members are elected to the Legislative Assembly and the Legislative Council, and, more particularly, the matters listed in paragraphs 1-4 below:

1. *The concept of “one vote, one value”, and the weighting of votes cast by rural and remote voters in determining the composition of the Legislative Assembly.*
2. *Regional representation in the Legislative Council, and the means of ensuring that there is adequate representation, and resourcing of representatives, for rural and remote areas.*
3. *The manner and form requirements, if any, for the repeal of the Electoral Distribution Act 1947.*
4. *Any other matter relevant to the aforementioned Bills.”*

APPROACH TAKEN FOR THE INQUIRY

1.17 The Committee adopted the following program for the inquiry:

1.17.1 An advertisement was placed in the following newspapers on or around Saturday October 6 2001 inviting written submissions (and seeking

⁷ *Hansard*, Legislative Council, Wednesday, October 17 2001, p. 671.

expressions of interest from those wishing to make oral submissions) on the terms of reference for the inquiry, with a submission deadline of Friday October 19 2001 (or within 10 working days of the advertisement in the case of certain regional newspapers):

- a) *The West Australian*
- b) *Kimberley Echo*
- c) *Broome Advertiser*
- d) *Northern Guardian*
- e) *Kalgoorlie Miner*
- f) *Esperance Express*
- g) *MidWest Times*
- h) *Merredin-Wheatbelt Mercury*
- i) *Wagin Argus*
- j) *Albany Advertiser*
- k) *Manjimup-Bridgetown Times*
- l) *Bunbury South West Times*
- m) *North West Telegraph*
- n) *Elders Farm Weekly*
- o) *Countryman*

1.17.2 The Committee resolved to advertise in additional local newspapers in rural and remote areas, however it was unable to obtain the additional funds required to place the advertisement in wider circulation.

1.17.3 The lack of additional funding for advertising resulted in the Committee conducting a public hearing in Jerramungup without prior notice being given in the major newspaper servicing that locality.

1.17.4 The Committee wrote to individuals and groups that were identified as having a particular interest or specialist knowledge in matters which are the subject of the Bills seeking written submissions addressing the terms of reference for the inquiry. A list of the individuals and groups contacted by the Committee is at

Appendix 3. A deadline of Friday October 19 2001 was given for these submissions.

1.17.5 The Committee conducted public hearings in the following rural and regional towns between Sunday October 21 2001 and Monday November 5 2001:

- a) Kalgoorlie
- b) Esperance
- c) Bruce Rock
- d) Lake Grace
- e) Kununurra
- f) Fitzroy Crossing
- g) Broome
- h) Port Hedland
- i) Karratha
- j) Tom Price
- k) Carnarvon
- l) Geraldton
- m) Meekatharra
- n) Wagin
- o) Jerramungup
- p) Mount Barker
- q) Manjimup

1.17.6 Details of the dates, times and venues for the above hearings are in the travel itinerary at Appendix 4.

1.17.7 The Committee held a public hearing in Perth on Wednesday November 7 2001.

1.18 A list of the witnesses that gave evidence at public hearings is at Appendix 5.

- 1.19 The deadline for the receipt of written submissions was subsequently extended by the Committee to Friday November 9 2001. A list of the written submissions received by the Committee is at Appendix 6.

CHAPTER 2

STATED AIMS OF THE BILLS

CURRENT REPRESENTATION IN THE LEGISLATIVE ASSEMBLY

2.1 Under the existing *Electoral Distribution Act 1947*, the 57 seats that make up the Legislative Assembly are derived from 57 single Member districts which are distributed as follows:

2.1.1 34 districts must be located in the Metropolitan Area (as defined in the Third Schedule of the *Metropolitan Region Town Planning Scheme Act 1959* as at January 1 1987 including Rottne Island), and the number of enrolled electors in each of these districts must not vary by more than 15% above or below the quotient obtained by dividing the total number of enrolled electors in the Metropolitan Area by 34.⁸

2.1.2 23 districts must be located in the area comprising the remainder of the State, and the number of enrolled electors in each of the districts must also not vary by more than 15% above or below the quotient obtained by dividing the total number of enrolled electors in the districts by 23.⁹

2.2 There are two distinct electoral areas under the existing system: the metropolitan area and the non metropolitan area. There is no relationship between the quotient for the number of enrolled electors in the districts for the metropolitan area and the quotient for the number of enrolled electors in the districts that make up the non metropolitan area. Notwithstanding the discrepancy between the population in the metropolitan area and the population in the non metropolitan area, there must still be only 34 districts in the metropolitan area and 23 districts in the non metropolitan area.

2.3 The quotients established by the Electoral Distribution Commissioners at the last redistribution on February 7 1994 were determined as follows:¹⁰

Based upon a total State enrolment of 1,034,006 electors

A Metropolitan Area enrolment of 760,595 electors

⁸ *Electoral Distribution Act 1947*, s 6.

⁹ *ibid.*

¹⁰ *Redistribution – or Division of the State*, Western Australian Electoral Commission, at Internet site: <http://www.waec.wa.gov.au/frames.asp?section=electorate>.

A Non-metropolitan Area enrolment of 273,411 electors

Metropolitan Area Quotient (760,595 divided by 34) = 22,370

Non-metropolitan Area Quotient (273,411 divided by 23) = 11,887

The permitted variation in the number of enrolled electors (+ or - 15%):

Metropolitan Area Districts	(-15%) = 19,015
	(+15%) = 25,726
Non-metropolitan Area Districts	(-15%) = 10,104
	(+15%) = 13,671

- 2.4 When making a division of the State into regions and districts pursuant to the *Electoral Distribution Act 1947*, the Electoral Distribution Commissioners must make a number of value judgements and predictions based upon the requirements of s7 of the *Electoral Distribution Act 1947*:

“7. Matters to be considered in dividing the State into regions and districts

In making the division of the State into regions and districts the Commissioners shall give due consideration to –

- (a) community of interest;*
- (b) means of communication and distance from the capital;*
- (c) physical features;*
- (d) existing boundaries of regions and districts;*
- (e) existing local government boundaries;*
- (f) the trend of demographic changes,*

and where the State is divided for the first time -

- (g) boundaries of the electoral provinces and electoral districts into which the State was divided prior to the division.”*

2.5 In making their last determination of the division of the State into electoral regions and districts on November 28 1994, the Electoral Distribution Commissioners noted that:

“The criterion of the trend of demographic changes was an important determinant of the initial elector populations of districts. This provision led the Commissioners to fix the initial elector population in each district which will, having regard to the trend of demographic changes, produce approximate equality of elector numbers as far as practicable in each district in four years’ time.”¹¹

2.6 The process of making forward projections is an imperfect science in this context, and has contributed to the creation of a number of electorates which vary widely in their total of enrolled voters. The variations between the enrolments in each district between the date of the last redistribution and June 30 2001 is set out in the two tables at Appendix 7.¹²

2.7 The Western Australian Electoral Commission (WAEC) maintains quarterly statistics on the number of enrolled voters in the State and calculates notional district quotients from them. For example, as at June 30 2001, the number of enrolled voters in Western Australia was 1,206,736. The Metropolitan Area enrolment figure as at June 30 2001 was 893,829 which would give a Metropolitan Area district quotient of 26,289. The Non-metropolitan Area enrolment figure as at June 30 2001 was 312,907 which would give a Non-metropolitan Area district quotient of 13,605.¹³

2.8 The following Metropolitan Area districts had a total number of enrolled voters which was 15% above or below the notional district quotient of 26,289 as at June 30 2001:

2.8.1 Wanneroo, with 39,383 enrolled voters with a 49.81% variation.

2.8.2 Southern River, with 32,471 enrolled voters with a 23.52% variation.

2.8.3 Peel, with 32,327 enrolled voters with a 22.97% variation.¹⁴

2.9 The following Non-metropolitan Area districts had a total number of enrolled voters which was 15% above or below the notional district quotient of 13,605 as at June 30 2001:

¹¹ *Western Australian Government Gazette*, No. 168, November 28 2001, p. 5.

¹² *Electoral Enrolment Statistics as at 30 June 2001*, Western Australian Electoral Commission, July 18 2001, at Internet site: <http://www.waec.wa.gov.au/frames.asp?section=electorate>.

¹³ *ibid.*

¹⁴ *ibid.*

- 2.9.1 Mitchell, with 18,046 enrolled voters with a 32.65% variation.
- 2.9.2 Dawesville, with 17,720 enrolled voters with a 30.25% variation.
- 2.9.3 Vasse, with 17,366 enrolled voters with a 27.65% variation.
- 2.9.4 Warren-Blackwood, with 15,936 enrolled voters with a 17.14% variation.
- 2.9.5 Burrup, with 10,759 enrolled voters with a -20.92% variation.
- 2.9.6 Pilbara, with 10,392 enrolled voters with a -23.61% variation.
- 2.9.7 Ningaloo, with 10,275 enrolled voters with a -24.47% variation.
- 2.9.8 Eyre, with 9,412 enrolled voters with a -30.82% variation.¹⁵

REFORM OF THE WESTERN AUSTRALIAN ELECTORAL SYSTEM

- 2.10 Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, stated in his Second Reading Speech on the Electoral Amendment Bill 2001 on August 30 2001 that the object of the Bill is electoral equality:

“[E]lectorate equality - that is, that all citizens should have an equal say in electing their Government - is enshrined in the electoral laws of the Commonwealth; the electoral laws of every other State and Territory in Australia; the jurisprudence of countries such as the United States of America and Canada; international conventions and treaties, such as article 25 of the International Covenant on Civil and Political Rights; the concept of representative democracy as espoused by academic writers and popularly understood; and the recommendations of bodies reporting on matters with regard to integrity of government, such as the 1992 Royal Commission into Commercial Activities of Government and Other Matters, and the Commission on Government.”¹⁶

¹⁵ *ibid.*

¹⁶ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech, *Hansard*, Legislative Council, August 30 2001, p. 3428.

- 2.11 Hon Nick Griffiths MLC further stated that the practical outcome of this object is likely to be as follows:

“It is expected that the effect of this legislation will be to create four electorates in the Mining & Pastoral Region, which currently has six; four electorates in the Agricultural Region, which currently has seven; seven electorates in the South West Region, which currently has 10; and 42 electorates in the metropolitan area, which currently has 34.”¹⁷

- 2.12 The stated object of the Electoral Distribution Repeal Bill 2001 is to consolidate all aspects of State elections and parliamentary representation in to a single piece of legislation, namely the *Electoral Act 1907*. To this end, the Bill proposes to repeal the *Electoral Distribution Act 1947* and also proposes to remove from the *Constitution Acts Amendment Act 1899* those provisions relating to the numbers of and representation of electoral regions and electoral districts.¹⁸
- 2.13 The Liberal Party of Australian (Western Australian Division) Inc objected strongly to the repeal of the *Electoral Distribution Act 1947* due, amongst other reasons, to the fact that it believes that it makes good sense to have a separate Act governing the redistribution process, leaving the *Electoral Act 1907* to deal with the more detailed processes of voting and administration.¹⁹

WHAT IS ONE VOTE ONE VALUE OR VOTE PARITY?

- 2.14 One vote one value in its purist form of absolute equality requiring electoral districts to be of numerical equality so that every voter’s vote is of equal value. It is a mathematical model and is achieved by dividing the total number of enrolled electors by the total number of electoral districts.
- 2.15 Other terms used to described one vote one value include ‘vote parity’, ‘electoral equality’ and ‘equal voter numbers’.
- 2.16 ‘Relative equality’ recognises the practical limitations on strict equality and permits some departure. Generally in Australia this has been 1%, 5%, 10% or 20%.

¹⁷ *ibid*, p. 3432.

¹⁸ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech, *Hansard*, Legislative Council, Tuesday, September 18 2001, p. 3828.

¹⁹ Submission of the Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, pp. 4-5.

What is vote weighting?

- 2.17 Weighting an electoral system is one way in which the electoral system can be used to favour or compensate a particular group. Although weighting can take the form of allocating a number of seats to minority groups, it more commonly refers to the allocation of markedly unequal numbers of electors to electoral districts.

Confusion of concepts

- 2.18 The Committee observed that a number of witnesses seemed to confuse the concept of one vote one value with first past the post or optional preferential voting systems.
- 2.19 The Committee has, for clarity, provided a brief explanation of these systems and others in the glossary at the beginning of the report.

CHAPTER 3

SPECIFIC PROVISIONS OF THE BILLS

ELECTORAL DISTRIBUTION REPEAL BILL 2001

- 3.1 Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, stated in his Second Reading Speech on the Electoral Distribution Repeal Bill 2001 on September 18 2001 that:

“This Bill proposes to repeal the 1947 Electoral Distribution Act. It also proposes to remove from the 1899 Constitution Acts Amendment Act the provisions relating to the numbers of and representation of electoral regions and electoral districts. As I have outlined to members, there has been a continual evolution in relation to the electoral arrangements for this Parliament. Those arrangements are gradually being taken out of the Western Australian Constitution and the Constitution Acts Amendment Act and are being placed in a single piece of legislation dealing with all aspects of the electoral process. This Bill facilitates that continuing evolution of Western Australia’s electoral arrangements.”²⁰

Clauses 1 and 2

- 3.2 Clauses 1 and 2 of the Electoral Distribution Repeal Bill 2001 deal with the Bill’s title and provide that the enacted Bill will come into operation as soon as it is assented to by the Governor.

Clause 3

- 3.3 This clause repeals, in its entirety, the *Electoral Distribution Act 1947*.

Clause 4

- 3.4 This clause amends the *Constitution Acts Amendment Act 1899* to facilitate the transfer of matters relating to the election of Members of the Legislative Assembly and Legislative Council from the *Constitution Acts Amendment Act 1899* to the *Electoral Act 1907*.

²⁰ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech on the Electoral Distribution Repeal Bill 2001, *Hansard*, Legislative Council, September 18 2001, p. 3827.

- 3.5 Section 5 of the *Constitution Acts Amendment Act 1899* is amended and s6 is repealed so as to remove from that Act the references to the six electoral regions in the Legislative Council and the number of Members to be returned from each region.²¹ Accordingly, were this Bill to be passed, s5 of the *Constitution Acts Amendment Act 1899* would simply state:

“5. Constitution of Legislative Council

The Legislative Council shall consist of 34 elected members who shall be returned and sit for electoral regions.”

- 3.6 Sections 18 and 19 of the *Constitution Acts Amendment Act 1899*, which establishes the Legislative Assembly to be composed of 57 Members elected from 57 single Member electoral districts established under the *Electoral Distribution Act 1947*, are repealed by clause 4.²² In their place, the following s18 is inserted:

“18. Constitution of Legislative Assembly

The Legislative Assembly shall consist of 57 elected members who shall be returned and sit for electoral districts.”

Clause 5

- 3.7 Clause 5 deals with transitional provisions which permit existing Legislative Assembly electoral districts and Legislative Council electoral regions (as established by a determination of the Electoral Distribution Commissioners gazetted in the Government Gazette, No 168, on November 28 1994) to continue in existence until a redistribution can take place under the provisions of the proposed Part IIA of the *Electoral Act 1907*, to be inserted by clause 4 of the Electoral Amendment Bill 2001.
- 3.8 Until a redistribution can take place under the proposed arrangements, all current Legislative Council and Legislative Assembly Members will continue to represent the same regions and districts respectively, and any by-elections are to be held in respect of those same regions and districts.
- 3.9 The Committee notes that subparagraph 5(2)(c)(iii) of the Bill refers to “sections 156C and 156D”, but does not state which Act these sections are contained in. It would

²¹ It is intended that s6 of the *Constitution Acts Amendment Act 1899* will be effectively inserted in the *Electoral Act 1907* as s16D of that Act by clause 4 of the Electoral Amendment Bill 2001.

²² The requirement for 57 single Member electoral districts for the Legislative Assembly and the means by which their boundaries are determined are to become the subject of Part IIA of the *Electoral Act 1907*, which is to be inserted by clause 4 of the Electoral Amendment Bill 2001.

appear that this clause refers to ss156C and 156D of the *Electoral Act 1907*, which relate to the filling of vacancies by recount in the Legislative Council.

Clause 6

- 3.10 Clause 6 of the Bill makes consequential amendments to the *Electoral Act 1907* to remove references to the *Electoral Distribution Act 1947* in ss 24 and 51 of the *Electoral Act 1907*. Those sections will continue to refer to an electoral redistribution generally, without referring to the specific Act responsible for the redistribution of electoral districts and regions.

Clause 7

- 3.11 Clause 7 makes consequential amendments to s11 of the *Juries Act 1957* to remove a reference to the *Electoral Distribution Act 1947*. The amended section will thereafter refer to a Legislative Assembly district redistribution pursuant to “any law”.

Clause 8

- 3.12 Clause 8 of the Bill makes a consequential amendment to the *Salaries and Allowances Act 1975*. Section 6(6) of the *Salaries and Allowances Act 1975*, which relates to variations to determinations on electorate allowance payments to Members of Parliament as a result of an electoral redistribution, is amended by deleting reference to the *Electoral Distribution Act 1947*, and inserting in its place a general reference to “a subsequent division of the State into electoral districts and electoral regions”.

ELECTORAL AMENDMENT BILL 2001

- 3.13 Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, stated in his Second Reading Speech on the Electoral Amendment Bill 2001 on Thursday, August 30 2001 that:

*“It is expected that the effect of this legislation will be to create four electorates in the Mining and Pastoral Region, which currently has six; four electorates in the Agricultural Region, which currently has seven; seven electorates in the South West Region, which currently has 10; and 42 electorates in the metropolitan area, which currently has 34. The legislation proposes that the status quo be broadly preserved in the Legislative Council.”*²³

²³ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech, *Hansard*, Legislative Council, August 30 2001, p. 3428.

Clauses 1 and 2

- 3.14 Clauses 1 and 2 of the Electoral Amendment Bill 2001 deal with the Bill's title and provide that the enacted Bill will come into operation on a day fixed by proclamation. The Act will be proclaimed at a time which will allow the Electoral Distribution Commissioners to carry out the first electoral redistribution under the then Act's provisions.²⁴

Clause 3

- 3.15 Clause 3 of the Bill states that the Bill is amending the *Electoral Act 1907*.

Clause 4

- 3.16 Clause 4 of the Bill proposes to insert a new Part IIA in the *Electoral Act 1907*.
- 3.17 Proposed Part IIA contains proposed ss 16A to 16N, which relate to the establishment of electoral districts for the Legislative Assembly and electoral regions for the Legislative Council and the number of Members that shall be elected to represent each district and region.
- 3.18 Proposed s16B effectively reproduces the existing s2 of the *Electoral Distribution Act 1947* in establishing the three Electoral Distribution Commissioners.²⁵ (See comment at paragraph 3.34).
- 3.19 Proposed s16C effectively reproduces the existing s19 of the *Constitution Acts Amendment Act 1899* in establishing 57 single Member electoral districts for the Legislative Assembly.²⁶
- 3.20 Proposed s16D effectively reproduces the existing s6 of the *Constitution Acts Amendment Act 1899* in establishing two seven-Member electoral regions and four five-Member electoral regions for the Legislative Council.²⁷
- 3.21 Proposed s16E requires that an electoral redistribution take place in accordance with proposed Part IIA as soon as the enacted Bill comes into operation on a day to be fixed by proclamation.

²⁴ Clause Notes, Electoral Amendment Bill 2001, p. 1.

²⁵ The *Electoral Distribution Act 1947* is proposed to be repealed by clause 3 of the Electoral Distribution Repeal Bill 2001.

²⁶ Section 19 of the *Constitution Acts Amendment Act 1899* is proposed to be repealed by clause 4 of the Electoral Distribution Repeal Bill 2001.

²⁷ Section 6 of the *Constitution Acts Amendment Act 1899* is proposed to be repealed by clause 4 of the Electoral Distribution Repeal Bill 2001.

- 3.22 Proposed s16F provides for an electoral redistribution to take place as soon as practicable two years after the date of every second general election. This proposed section changes the timing of an electoral redistribution from one year after every second general election, as is the existing situation under s2A(2) of the *Electoral Distribution Act 1947*, to two years after every second general election.
- 3.23 Proposed s16G reproduces the existing provisions in ss 2A(3) and (4) of the *Electoral Distribution Act 1947* which allow for the Governor to direct additional redistributions to be made, and for the Parliament to pass a resolution requiring the Governor to direct additional redistributions to be made.
- 3.24 Proposed s16H introduces a new concept to the electoral distribution process in Western Australia of “projection time”. When a redistribution takes place under proposed Part IIA, the average enrolled voter population for each electoral district is to be determined by way of the projected voter population for the State at a date four years after the date at which the redistribution is due to commence (that is, either two years after the second general election based upon the existing distribution, or the day of proclamation of the Governor’s direction to conduct an additional redistribution, whichever is relevant) divided by 57.²⁸
- 3.25 Currently, a distribution is carried out by the Electoral Distribution Commissioners using a quota calculated on the enrolment figures on the date that the distribution commences, with the subsequent region and district boundaries then being drawn subject to the further instruction set out in s7 of the *Electoral Distribution Act 1947* to take into account, amongst other factors, projected demographic changes. The change to projections of total voter enrolments four years in advance implements a recommendation of the Commission on Government (COG) which states:
- “The quota of enrolled voters for each Legislative Assembly electoral district should be determined by dividing the total State enrolment, projected four years in advance, by the number of seats to be distributed. A plus or minus 15 per cent deviation from the quota should be permitted based on the criteria listed below.”²⁹*
- 3.26 Apart from the requirement to establish a quota based upon projected voter enrolments four years in advance, and to provide details of the number of square kilometres in the area of each of the 57 electoral districts, proposed s16I reproduces the existing functions of the Electoral Distribution Commissioners as set out in s3 of the *Electoral Distribution Act 1947*.

²⁸ Clause Notes, Electoral Amendment Bill 2001, p. 2.

- 3.27 Proposed s16J sets out the basis for dividing the State into 57 single Member electoral districts whose representatives will form the Legislative Assembly. Proposed s16J states:

“16J. Basis for division of the State into districts

- (1) *The Commissioners shall divide the State into districts in accordance with the principles that —*
- (a) *if a district has an area of less than 100 000 square kilometres, the number of electors comprised in the district at the projection time must not be more than 10% greater, or more than 10% less, than the average district enrolment at the projection time; and*
- (b) *if a district has an area of 100 000 square kilometres or more, the sum of —*
- (i) *the number of electors comprised in the district at the projection time; and*
- (ii) *the additional large district number,*
- must not be more than 10% greater, or more than 20% less, than the average district enrolment at the projection time.*

- (2) *In subsection (1)(b) —*

“additional large district number” *means 0.5% of the number of square kilometres in the area of the district.”*

- 3.28 Proposed s16J is the most significant part of the Bill and will, subject to the passing of both this Bill and the Electoral Distribution Repeal Bill 2001, replace the existing s6 of the *Electoral Distribution Act 1947*, which states:

“6. Basis for division of the State into districts

- (1) *The Commissioners shall -*
- (a) *divide the Metropolitan Area into 34 districts; and*

²⁹ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1 1995, Chapter 8, p. 302, para 8.3.5.5.

(b) *divide the area comprising the remainder of the State into 23 districts.*

(2) *The Commissioners shall make the division of an area mentioned in subsection (1) (a) or (b) into districts in accordance with the principle that the number of enrolled electors comprised in any district in the area must not be more than 15% greater, or more than 15% less, than the quotient obtained by dividing the total number of enrolled electors in the area by the number of districts into which the area is to be divided.”*

3.29 The most obvious change in the way that Legislative Assembly electoral districts will be determined under proposed s16J is that there is no limitation on the number of metropolitan electorates and, correspondingly, no reservation of a set number of electorates for non metropolitan areas. Furthermore, the proposed s16J does not require a district to be classified as either metropolitan or non metropolitan, and electorates may therefore be partly metropolitan and partly non metropolitan in character.

3.30 Proposed s16K generally reproduces the existing s9 of the *Electoral Distribution Act 1947* in establishing the basis for the division of the six electoral regions for the Legislative Council. However, unlike in the existing *Electoral Distribution Act 1947*, the term “metropolitan area” is not defined for the purposes of establishing the boundaries for the North Metropolitan Region, the South Metropolitan Region and the East Metropolitan Region. Accordingly, instead of there being a requirement that the three metropolitan electoral regions when combined form the region that was, as at January 1 1987, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* in addition to Rottnest Island³⁰, the proposed s16K simply requires that the three metropolitan electoral regions together form an area that is generally coextensive with the undefined “metropolitan area of Perth”.

3.31 Proposed s16L reproduces the matters to be considered in dividing the State into regions and districts that are presently contained in s7 of the *Electoral Distribution Act 1947*.

3.32 Proposed s16M effectively reproduces the power of the Electoral Distribution Commissioners to modify boundaries of electoral districts which is presently set out in s8 of the *Electoral Distribution Act 1947*.

³⁰ As is presently required under s9(a) of the *Electoral Distribution Act 1947*.

- 3.33 Proposed s16N effectively reproduces the existing s11 of the *Electoral Distribution Act 1947* in providing that a notice published in the *Government Gazette* by the Electoral Distribution Commissioners dividing the State into districts and regions has the force of law.

COMMENTS MADE IN SUBMISSIONS

The Chief Justice as Chairman of the Electoral Distribution Commissioners

- 3.34 Professor Greg Craven, Dean of The University of Notre Dame Australia Law School, was concerned that proposed s16B, although continuing current practice in conferring upon the Chief Justice of the Supreme Court of Western Australia the function of acting as Chairman of the Electoral Distribution Commissioners, raised serious concerns about the separation of powers doctrine as observed in practice, if not applied in strict law, in the Australian states:

*“What is proposed is, in effect, the conferral of what potentially could be a highly controversial executive function upon the chief judicial officer of the State. This potentially could see any given Chief Justice accused of political bias, electoral incompetence or both, which would be highly damaging to the reputation of the Supreme Court. It is precisely for such reasons that adherence to the value of the separation of powers would mandate that the Chief Justice not be included among the Electoral Distribution Commissioners.”*³¹

Dummy Votes

- 3.35 The submission of the Liberal Party of Australia (Western Australian Division) Inc was highly critical of the operation of proposed s16J:

*“What the Liberal Party opposes is the device of the “additional large district number” (the proposed Section 16J of the Electoral Act) whereby a district gains one notional elector for every 200 square kilometres of a district of more than 100,000 square kilometres. Once again cynicism among electors will be increased by the awkward concept of “dummy voters”.”*³²

- 3.36 The Liberal Party of Australia (Western Australian Division) Inc, expressed concern that the proposal would give enhanced representation to remote districts that are huge

³¹ Submission of Professor G.J. Craven, Dean of the University of Notre Dame Australia Law School, dated October 17 2001, pp. 6-7.

³² Submission of the Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, p. 3.

in land area but which contain electors concentrated in a relatively low number of towns, at the expense of rural districts that are smaller in area but with a consistent spread of population across the district.³³ Although the Liberal Party of Australia (Western Australian Division) Inc appreciates that the “additional large district number” device operates in Queensland, it considers that its effects will be far more discriminatory in Western Australia:

“[I]ndicative modelling of the Mining and Pastoral Region districts by the Western Australian Electoral Commission shows a seat of “Gascoyne” with an area of 1.4 million square kilometres, 53% of the State’s land area. This seat would have nearly 7000 “dummy electors”, enabling it to fall 40% below average in reality. The district of Kimberley would be 27% below the median. Even the new enlarged agricultural seats would benefit only slightly from “dummy electors” and one possible seat comprised of most of the current Avon and Merredin districts with an area of 32,000 square kilometres would not benefit but would be placed above quota.”³⁴

OBSERVATIONS

- 3.37 With respect to electoral distribution the Committee considers that the current system of taking into account predictions of demographic changes is unsatisfactory. It has often lead to a greater deviation from quota than would have been the case had actual elector numbers been used.
- 3.38 If the distribution were made closer to the time of election and to last for a lesser period of time then there is a greater chance that electorate numbers will more accurately be reflected and within the allowable deviation. This could be achieved by having a redistribution after each election and carrying it out closer to the time of the next election. Such a course of action is more feasible with the use of computers to assist in drawing the initial boundaries for consideration.
- 3.39 A redistribution in the third year after an election would probably be feasible for the requirements of the WAEC but would not leave sufficient time for the political processes prior to an election.

³³ *ibid.*, p. 4.

³⁴ *ibid.*

RECOMMENDATIONS**Recommendations of the Committee - Unanimous**

Recommendation 1: The Committee recommends that the Electoral Amendment Bill 2001 include an amendment to cause redistributions to occur as soon as practicable, two years after the polling day for each general election for the Legislative Assembly, by deleting section 16F in Clause 4 and substituting a replacement as in Appendix 2.

Recommendation 2: The Committee recommends that section 16H in Clause 4 of the Electoral Amendment Bill 2001 be deleted.

Recommendation 3: The Committee recommends that paragraph (f) in proposed section 16L in Clause 4 of the Electoral Amendment Bill 2001 be amended to insert at the end “but not so as to make a forward projection of elector numbers” as set out in Appendix 2.

Recommendations of the Committee - Majority

Recommendation 4: Subject to recommendations 1, 2 and 3 the Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) recommends that the Electoral Amendment Bill 2001 be passed with the amendments as set out in Appendix 2.

Recommendation 5: The Committee by a majority (Hons Peter Foss, George Cash, Giz Watson and Paddy Embry MLCs) recommends that the Legislative Council take measures to ensure that prior to the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 coming into effect that the question whether it is lawful for the Clerk to present the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 for the Royal Assent unless the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 have been passed by an absolute majority of both Houses on the second and third readings be determined by the Full Court of the Supreme Court of Western Australia.

Recommendation 6: The Committee by a majority (Hons Kate Doust, Adele Farina and Giz Watson MLCs) recommends that the Electoral Distribution Repeal Bill 2001 be passed without amendment.

Recommendations of a Minority

Recommendation A: A minority of the Committee (Hons Peter Foss and Paddy Embry MLCs) recommends that the Electoral Distribution Repeal Bill 2001 not be passed until Recommendation 5 has been complied with.

Recommendation B: A minority of the Committee (Hons Peter Foss and Paddy Embry MLCs) recommends that the Electoral Amendment Bill 2001 not be passed until Recommendation 5 has been complied with.

Recommendation C: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Distribution Repeal Bill 2001 be defeated.

Recommendation D: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Amendment Bill 2001 be defeated.

CHAPTER 4

THE HISTORY AND ROLE OF THE LEGISLATIVE ASSEMBLY

THE LEGISLATIVE ASSEMBLY

- 4.1 The Bills propose that in structure the status quo in the Legislative Assembly be preserved. However, there are implications with regards to regional and rural representation.
- 4.2 Before considering the implications of the proposed legislation on the Legislative Assembly it is useful to briefly outline the history of the Legislative Assembly, how it is constituted and its functions.

The history of the Legislative Assembly

- 4.3 In 1889 the Legislative Council passed the *Constitution Act 1889* which, when ratified by the British Parliament, established a bicameral parliament for Western Australia. The Legislative Assembly was formally established in 1890.
- 4.4 The Legislative Assembly originally had 30 single Member districts, six of which were in the metropolitan area and 24 in the remainder of the State. The first past the post method of counting votes was employed (see glossary). Neither enrolment nor voting was compulsory.³⁵
- 4.5 As the COG Report (Commission on Government Report) notes, the qualifications for voting and for being a Member which were originally applied by both the Legislative Assembly and Legislative Council were based primarily on wealth:

“An examination of the franchise and composition of the two houses suggests they were designed to represent the interests of two different groups. The Legislative Council was representative of wealthy landowners. The Legislative Assembly represented a broader section of the community but still had some property qualifications. When this difference in franchise and composition is combined with the allocation of powers, there is evidence that the two houses of the new Western Australian Parliament were to rely on negotiation and compromise in order to pass legislation. Neither house was specified in the Constitution as a house of government or a house of review.”

³⁵ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, p. 277.

*The electoral system for the Legislative Assembly created a different system of rules for the franchise and for candidates, from that of the Legislative Council. Both were biased toward wealthy, white, male landowners. This excluded many residents of the Colony from voting or nominating as candidates. The threshold for property qualifications in the Legislative Assembly was lower than that in the Legislative Council. This allowed approximately three times as many people to vote in the Legislative Assembly elections as for the Legislative Council elections.*³⁶

- 4.6 In 1893, the Legislative Assembly abolished the property requirement for both voters and candidates. At the 1894 election the Council had 4,624 electors on its roll, while the Assembly had 12,884.³⁷
- 4.7 In 1901 there were 10 metropolitan seats and 40 country seats. This ratio gradually changed and in 1929 there were 18 metropolitan seats and 32 country seats. This balance remained unchanged until 1947.³⁸
- 4.8 Full preferential voting was introduced in 1911.³⁹
- 4.9 In 1965 the number of seats in the Legislative Assembly increased from 50 to 51 and was further increased to 55 in 1975, and 57 in 1981.
- 4.10 In 1987, Parliament divided the State into two zones for the purposes of determining Legislative Assembly seats; metropolitan and the remainder of the State. The division of seats between the two was 34 metropolitan and 23 non metropolitan.

The role of the Legislative Assembly

- 4.11 The Western Australian Parliament is a bicameral system, that is, it has two Houses: the Legislative Assembly and the Legislative Council. While the Constitution of Western Australia requires the Parliament to make laws for peace, order and good Government of Western Australia, it is the Legislative Assembly that establishes which party provides the Government.

³⁶ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1 1995, August 1995, pp. 276-7.

³⁷ *ibid*, p. 277.

³⁸ *ibid*, p. 278.

³⁹ *ibid*, p. 279.

4.12 The Legislative Assembly's principal functions are:

- 4.12.1 To provide an Executive (Ministry) for the administration of the day to day affairs of Government, that is services provided by departments and authorities. Executive Government is formed by the political party or coalition of parties with a majority of Members in the Legislative Assembly. The leader of the majority becomes the Premier when appointed by the Governor and chooses Ministers from the Members of the majority party in the Legislative Assembly and Legislative Council.
- 4.12.2 To initiate money bills and scrutinize the Government's budget, principally through the Estimates Committees in each House of Parliament.
- 4.12.3 To monitor and scrutinise Executive Government's administration and operations.
- 4.12.4 To legislate. Legislation in the form of Bills are introduced into Parliament as the method by which Parliament enacts laws.
- 4.12.5 To provide representation for the people of Western Australia.

CHAPTER 5

ONE VOTE ONE VALUE AND THE ARGUMENTS AGAINST RURAL VOTE WEIGHTING IN THE LEGISLATIVE ASSEMBLY

5.1 This Chapter represents the view of the majority of the Committee, namely the Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs.

ONE VOTE ONE VALUE, BASIS OF REPRESENTATIVE DEMOCRACY

5.2 One of the features common to modern representative democracies is an acceptance of the principle that the primary basis for representation in the legislature should be population. More specifically, equal numbers of electors should have equal numbers of representatives. This principle implements two fundamental theoretical underpinnings of representative democracy; popular sovereignty and equality of individuals. That some models permit modest departures from strict equality does not undermine the central importance of the principle, but merely reflects the existence of other interests that need to be accommodated within an electoral system (for example, very large geographical areas). The principle of equal electorates should be seen as a minimal requirement for a representative democracy.

5.3 The right for every individual to determine the Government of the day, should be equal regardless of race, gender, position, wealth or place of residence - this underpins the argument for one vote one value. This is the basic tenet of representative democracy:

“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government..... Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.” (Reynolds v Sims (1964) 377 US 533.)⁴⁰

5.4 Hon Arthur Tonkin stated in his written submission to the Committee:

“If we truly believe in democracy, there are many ways to judge whether we are in fact living in a democracy. One such criterion would be whether a community defends the rights of minorities.

⁴⁰ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech, *Hansard*, Legislative Council, August 30 2001, p. 3428.

Another is that the will of the people must be the basis of the authority of any government.”⁴¹

5.5 He went on to state:

“I believe it is the birthright of every Australian to have a say in the formulation of laws which all have to obey. Furthermore, it seems to me to be a self-evident truth that all votes must have equal value so far as that is possible.”⁴²

5.6 In the absence of relatively equal electoral districts, a voter in a constituency containing more voters would be denied an equivalent say in the electoral process to one in a less numerous constituency; and the legislature would less accurately reflect the opinions of the electorate.

5.7 The Electoral Amendment Bill 2001 establishes a system of electoral equality whilst permitting modest departure from strict equality in the pursuit of fair and effective representation by allowing a 10% variance from the quota in all but the geographically largest of electorates.⁴³

5.8 The practical problems in effectively representing remote and sparsely populated, geographically large electorates of 100,000 square kilometres or more is recognised in the Electoral Amendment Bill 2001 by allowing up to an additional 10% (that is 20% in total) variation below quota.

5.9 At s16L the Electoral Amendment Bill 2001 sets out matters which may be considered in determining the degree of variance from quota, these include community of interest, means of communication and distance from the capital, physical features, existing boundaries of regions and districts, and existing local government boundaries.

5.10 The Canadian Supreme Court stated that:

“...Factors such as geography, community, history, community of interest and minority representation can be taken into account to ensure that our legislative assemblies effectively represent the

⁴¹ Submission from Hon Arthur Tonkin, dated November 2 2001, p. 1.

⁴² Ibid, p. 1.

⁴³ See s16L Electoral Amendment Bill 2001 for those factors which may be considered by the Electoral Distribution Commissioners in determining the variance from quota.

diversity of our social mosaic. Beyond this, the dilution of one citizen's vote as compared to another's should not be accepted."⁴⁴

International Comparisons

- 5.11 In his second reading speech for the Electoral Amendment Bill 2001, Hon Nick Griffiths MLC said:

"In this state the content of representative democracy should be consistent with international standards such as Article 25 of the International Covenant on Civil and Political Rights, which was signed by Australia on 18 December 1972 and ratified on 13 August 1980, provides:-

"Every citizen shall have the right and the opportunity.. without unreasonable restrictions:-

to take part in the conduct of public affairs, directly or through freely chosen representatives;

*to vote ... at genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;"*⁴⁵

- 5.12 Hon Nick Griffiths MLC went on to say:

*"Comparison with similar democratic countries such as the United Kingdom, India, France, the United States and Canada ... supports the proposition that electoral equality is now regarded as an essential feature of representative democracy."*⁴⁶

- 5.13 In England, Scotland, Wales and Northern Ireland electoral districts are required to contain equal numbers of electors, so far as is practicable, while respecting local government boundaries and permitting modest deviations from equality for reasons of

⁴⁴ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, p. 298. Reference re: Electoral Boundries Commission Act (Sask.) (1991) 81 DLR (4th), p. 16.

⁴⁵ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech on the Electoral Distribution Repeal Bill 2001, *Hansard*, Legislative Council, August 30 2001, p. 3425.

⁴⁶ *ibid*, p. 3426.

geographical dispersal or to minimise the disruption attendant upon boundary changes.⁴⁷

- 5.14 The written constitutions of the Republic of Ireland and India explicitly adopt the principle of numerical equality in electoral districts, so far as is practicable.⁴⁸
- 5.15 In France, Article 3.3 of the 1958 Constitution requires that voting be “*universal, equal and secret*”. This has been interpreted as requiring equal electoral divisions, subject to modest deviations required by other public interests.⁴⁹
- 5.16 In a 1994 article published in the University of Western Australia Law Review Peter Creighton stated:

*“Although explicit requirement for equal electoral districts are widespread in more modern democratic constitutions, the absence of express provisions in older constitutions has not prevented the recognition of the primacy of equal electoral districts as essential to a system of representative democracy.”*⁵⁰

- 5.17 Peter Creighton cites the US and Canada as principal examples.
- 5.18 In the US, the Supreme Court, expressing the view that equality of electoral districts is fundamental to a representative democracy, has insisted on strict numerical equality in electoral districts as the goal.⁵¹
- 5.19 Later cases allowed for a modest departure from strict equality for State legislature electoral districts, in the interests of fair and effective representation.⁵²
- 5.20 Canada’s Charter of Rights and Freedoms guarantee of the right of every citizen to vote⁵³ has been interpreted as a broad guarantee of democratic rights requiring relative

⁴⁷ *House of Commons (Redistribution of Seats) Act* (UK) 1949 and 1958; *R v Boundary Commission; Ex parte Foot* [1983] 1 All ER 1099; Creighton P, “Apportioning Electoral Districts in a Representative Democracy” (1994) 24 UWAL Rev 78 at 80.

⁴⁸ Article 16.2.3. See also *O’Donovan v Attorney General* [1961] IR 114; *In re Article 26 and the Electoral Amendment Bill 1961* [1961] IR 169; *O’Malley v An Taoiseach* [1990] 1 LRM 461 and Creighton P, “Apportioning Electoral Districts in a Representative Democracy” (1994) 24 UWAL Rev 78 at 80.

⁴⁹ Bell J, *French Constitutional Law* (Oxford); Clarendon Press, 1992 at 205–9 and Creighton P, “Apportioning Electoral Districts in a Representative Democracy” (1994) 24 UWAL Rev 78 at 80.

⁵⁰ Creighton P, “Apportioning Electoral Districts in a Representative Democracy” (1994) 24 UWAL Rev 78 at 80.

⁵¹ *Reynolds v Sims* (1964) 377 US 533 per Warren CJ.

⁵² *Mahan v Howell* (1973) 410 US 315; *Gaffney v Cummings* (1973) 412 US 736.

⁵³ Article 3.

parity of voting power. This is viewed as fundamental to the Canadian concept of representative democracy.⁵⁴

5.21 In the Canadian Supreme Court matter of *Reference re: Electoral Boundaries Commission Act*, Cory J, with whom Lamer CJC and L'Heureux-Dube J agreed, stated that:

*“...the right to vote is fundamental to democracy. If the right to vote is to be of true significance to the individual voter, each person’s vote should, subject only to reasonable variations for geographic and community interests, be as nearly as possible equal to the vote of any other voter residing in any other constituency.”*⁵⁵

Australian Electoral Laws

5.22 The Second Reading Speech for the Electoral Amendment Bill 2001 notes of Hon Nick Griffiths MLC, Minister for Racing and Gaming stated that although malapportionment was a common feature of early Australian electoral systems, today, every Australian Parliament has now legislated for the principle of Electoral Equality except in the Senate and both houses of the Western Australian Parliament:

- Commonwealth
 - The House of Representatives, at a redistribution within a state or territory, sets each electorate within a tolerance of 2% of the projected enrolment.
- Victoria
 - Both houses are required to have electorates of approximately equal enrolments within a tolerance of 10% at redistribution.
- NSW & South Australia
 - In the Legislative Assembly electorates are required to have equal enrolment within a tolerance of 10%.

⁵⁴ Creighton P, “Apportioning Electoral Districts in a Representative Democracy” (1994) 24 UWAL Rev 78 at 82; *Dixon v Attorney General (British Columbia)* (1989) 59 DLR (4th) 247; affirmed in *Reference re: Electoral Boundaries Commission Act 1991* 81 DLR (4th) 16.

⁵⁵ (1991) 81 DLR (4th) 16 at 26.

- Queensland
 - The 89 member house is required to have all electorates with equal enrolment within a 10% tolerance except for 5 geographically large electorates with a land area of 100,000 square kilometres or more.
 - For those large electorates, 2% of the area, expressed in square kilometres, is added to the electoral enrolment and the resultant sum is treated as the enrolment figure and required to be within the 10% tolerance.
- Tasmania
 - State lower house electorates are based on Federal electorates which accord with the principle of electoral equality. Each electorate returns an equal number of members.
- Australian Capital Territory
 - The ACT Electoral Act provides for equality through proportional representation from multi member electorates with the proviso that a tolerance of 5% is allowed in the number of votes required to elect a member between electorates.
- Northern Territory
 - Electorates are to be determined on the basis of equal enrolment within a 20% tolerance.⁵⁶

THE ARGUMENTS AGAINST RURAL VOTE WEIGHTING

5.23 The only plausible explanation for weighting electoral districts is to give greater significance to the vote of rural voters than to those of metropolitan voters, on the basis of claims that the former make particularly valuable contributions to the economy and have particular needs that would not be sufficiently understood by the large majority of voters who live in the metropolitan area. Tyranny of distance and decline of services and infrastructure are two of the concerns particular to rural areas most frequently raised by rural witnesses to the inquiry.

⁵⁶ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Minister for Electoral Affairs, Second Reading Speech Notes, undated, pp. 6-8.

Wealth generation not a justification for rural vote weighting

- 5.24 It is the view of the majority of the Committee that it is not the place of the electoral system to address the concerns of those with claims for special consideration on account of their economic strength or weakness. Other, more appropriate mechanisms are available to address such issues. The electoral system should produce a legislature representative of the electors.

“Legislators represent people not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.”⁵⁷

- 5.25 Cr Doug Krepp, at the hearing in Kalgoorlie, supported the view that generation of wealth should not be considered as a justification for rural vote weighting:

“We are all Western Australians, and we all seek an equal share of politicians and the distribution of the wealth.”

- 5.26 The Member for Wanneroo Ms Diane Guise MLA, at the hearing in Perth, in opposition to the argument that wealth generation is a justification for rural vote weighting, made comment that not all wealth is generated in rural areas:

“Arguments have also been raised about representing wealth, which I find interesting. That is not a fair call and I remind members that when considering the state’s wealth, Wanneroo comes in third behind only Carnarvon and Merredin in terms of the gross agricultural product. Therefore, that argument carries no weight.”⁵⁸

Decline of services and infrastructure not a justification for rural vote weighting

- 5.27 A significant number of rural witnesses expressed concern about the decline of services and infrastructure in rural areas, in particular over the past 10 years, and the likelihood that a reduction in the number of rural representatives would result in further decline of services and infrastructure. However, not all rural witnesses agreed.

- 5.28 Mr Ian Mickel, at the hearing in Jerramungup, while opposing the proposed electoral reform, saw that the delivery of services was a separate issue to that of representation:

“I believe there are two completely different issues. One is electoral representation; the other is services. There are inadequate services across much of the rural area of the State, but there are inadequate

⁵⁷ *Reynolds v Sims* (1964) 377 US 533).

⁵⁸ Transcript of evidence of Ms Diane Guise MLA, Member for Wanneroo, November 7 2001, p. 2.

services in some of the metropolitan areas. I do not want to talk about services. I am talking representation”⁵⁹

- 5.29 This justification ignores the fact that the decline in services and infrastructure referred to by rural witnesses has occurred under the current system of rural vote weighting and under successive governments.
- 5.30 It is the view of the majority of the Committee that it is not the place of the electoral system to address the concerns of decline in services and infrastructure in rural areas. This is a matter that is more appropriately addressed by government policy and funding priorities.
- 5.31 Further comment is made in relation to factors effecting rural communities in Chapter 11.

Tyranny of distance

- 5.32 Much was said of the effect of the electoral reform on Members of Parliament’s ability to effectively service electorates and access their constituents. However, as with all evidence this is very subjective based on where in the State you are located.
- 5.33 Cr Brad Snell, at the hearing in Karratha, expressed the view that the subjective nature of the description ‘remote’ made it difficult to justify ‘remoteness’ as a justification for rural vote weighting:

“I find difficulty to determine where we can objectively draw the line about where an area becomes remote. My sister and brother have lived in Perth all their lives. They live near Mosman Park. If they go to Joondalup or somewhere like that, that is going to the country from their perspective. From the perspective of the people who live in the Pilbara, we would think that Northam, Cunderdin or even Bindoon are just two minutes from Perth.”⁶⁰

- 5.34 Mr Larry Graham MLA in his evidence to COG said:

“Currently my electorate is the size of Victoria. It’s really academic to me whether it goes out to become the size of New South Wales”⁶¹

⁵⁹ Transcript of evidence of Mr Ian Mickel, November 4 2001.

⁶⁰ Transcript of evidence of Cr Brad Snell, Councillor, Shire of Roebourne, October 31 2001, p. 4.

⁶¹ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, p. 296.

5.35 Mr Barry Hasse MP, Federal Member for Kalgoorlie, arguably the largest electorate in the world, at the hearing in Kalgoorlie said:

*“I drive happily anywhere in a 500 kilometre radius. I charter to about 1500 kilometres. After that I take a commercial aeroplane and then drive. Five hundred kilometres is a short distance. I do not believe the distance from Perth comes into it.”*⁶²

5.36 Witnesses living in the South-West and Agricultural regions also claimed to be disadvantaged by distance. However, the scale of comparison between the north and south are very different. It was recognised that perceptions real or otherwise, argued either for or against the proposed electoral reform during the course of the Committee’s inquiry are true to that geographical area in which the witness has experience.

5.37 However, the current rural vote weighting is not fair.

5.38 This argument is also supported by the COG Report in which it is noted:

*“Even though Western Australia has an electoral system heavily weighted towards non-metropolitan representation, the apportionment of electoral districts does not fit consistently with the arguments for weighting. Weighting is applied arbitrarily to electoral districts such as those in the south-west of the state without any consideration of the differences between these seats and those in the remote north-west and eastern goldfields. A number of country members of parliament commented there were no longer justifiable reasons for special weighting to be given to the south-west districts or those seats close to Perth.”*⁶³

5.39 In *McGinty v Western Australia* (1996), Justice Gaudron of the High Court of Australia stated:

“...the malapportionment...is so great as to be distinctly at odds with democratic standards revealed in the electoral laws of the Commonwealth and the other Australian states.....Moreover, the distinction between metropolitan and non-metropolitan areas is...arbitrary and inflexible and, that being so, it cannot be justified on the basis that it is reasonably capable of being seen as appropriate and adapted to the disperse nature of the population in the remote

⁶² Transcript of evidence of Mr Barry Haase MP, Federal Member for Kalgoorlie, October 21 2001 p. 5.

⁶³ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, p. 301.

regions of Western Australia or to any other matter or circumstance which might bear on effective parliamentary representation.”⁶⁴

5.40 Also in *McGinty*, Justice McHugh stated:

“It is beyond question that the distribution of voters in the electoral districts and regions of Western Australia, for both the Legislative Council and the Legislative Assembly, results in the vote of some voters, particularly non-metropolitan voters, having a greater value than that of others. If the principle of representative democracy is a principle of the Constitution of the Western Australian Constitution, and if representative democracy under either Constitution requires that the number of voters in electoral districts or regions should be equal, so far as is reasonably practicable, the provisions of the 1899 Act and the 1947 Act are in breach of those Constitutions. The scheme set up by the two Acts arbitrarily distinguishes between metropolitan and non-metropolitan voters. On no rational basis can the special needs of electors in areas outside the non-metropolitan areas justify such large disparities as exist between particular electoral districts and regions.”⁶⁵

5.41 In conclusion, the only fair basis for democratic representation for Western Australia is that which recognises that every person has an equal say in how the Government of the day is elected, while permitting modest deviation from quota. Substantive vote weighting cannot be justified and this argument is amply summarised by Graham Hawkes:

“Lower enrolments do not compensate for problems faced by electors in country and remote areas. Electoral malpractice of this nature focuses on problems created by geography alone and proposes an unproven, indirect solution which is undemocratic. Unemployment, poverty, illiteracy and racial intolerance are other disadvantages suffered by some electors and the impact on these electors is as great as any disadvantage which electors suffer from geography. Vote weighting has not been proposed for these groups. Western Australia shows that there is never likely to be agreement about who is to be favoured by vote weighting. Neither is agreement likely about which disadvantage should be compensated nor about any formula for the

⁶⁴ *McGinty v Western Australia*, (1996) 70 ALJR 200, p. 237.

⁶⁵ *ibid*, p. 237.

extent of vote weighting, hence the reason for an electoral system that is neutral in it's effects.”⁶⁶

THE ROLE OF ELECTED REPRESENTATIVES

- 5.42 The majority of the Committee acknowledged that the demands on all elected representatives are many and varied. All Members of Parliament are expected to make themselves available to their constituents and many groups, and to work long hours.
- 5.43 Arguments that country representatives are expected to attend all school functions, sporting events and Shire meetings are equally true for metropolitan representatives. Similarly, metropolitan Members are expected to advise on provision of services by Government departments, assist in legal matters and to address a large and varied range of constituent inquiries.
- 5.44 While the 'downtime' associated with travel in country areas is recognised as a significant problem, metropolitan Members experience different challenges in having sufficient time to deal with the disproportionate numbers of constituents in many city districts and regions.

COMMENTS

- 5.45 It has been suggested that the Labor Party is of the view that provision of additional resources can compensate for a reduction in rural representation. This view is incorrect. The Labor Party recognises that all Members of Parliament need to be better resourced and further recognises that the practical problems facing Members representing rural and remote areas warrant special consideration.
- 5.46 It has been suggested that the appointment of regional Ministers is in substitution for the reduction of local Members of Parliament in rural and remote areas. This view is incorrect. Rather, this reflects the Labor Party's strong commitment to regional and rural Western Australia.

FINDINGS

- 5.47 The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) finds that the delivery of government services and infrastructure is determined by policy. Rural vote weighting has not assisted residents in country and

⁶⁶ “Parliament and Electoral Reform – A long Rocky Road towards Electoral Reform”, *Legislative Studies*, Vol 3 No 1, Autumn 1998, p. 27.

regional areas redress perceived disadvantages, real or otherwise, with regard to the delivery of government services and infrastructure or commercial investment.

- 5.48 The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) finds that the Electoral Amendment Bill 2001 recognises and reflects the existence of other interests that need to be accommodated within the Western Australian electoral system without undermining the fundamental principle of electoral equality.

CHAPTER 6

ARGUMENTS FOR VOTE WEIGHTING IN RURAL AND REMOTE AREAS OF WESTERN AUSTRALIA IN THE LEGISLATIVE ASSEMBLY AND ARGUMENTS AGAINST EQUAL VOTE NUMBERS

6.1 This Chapter represents the view of a minority of the Committee, namely Hons Peter Foss, George Cash and Paddy Embry MLCs.

The Perfect System in a Perfect World

- 6.2 A perfect electoral system in a perfect world would have electorates of equal size – both in numbers of voters and geographically. Each electorate would consist of people with a shared community of interest and there would be no major geographical obstructions to free passage around that electorate. The arrangement of the electorates would be such as not to create any natural permanent minority and all electors would have equal access to communication and transport so as to be able to contact and be contacted by their Members. Their Member would always vote in the interest of the electorate where the interest of the electorate demanded it and would not allow party demands to overrule that.
- 6.3 So that all Members had an equal time to spend in their electorates Parliament would sit in each electorate in turn.
- 6.4 As a result no doubt of this perfect system, government would ensure that all citizens were equally treated in matters such as education, health, housing, transport, roads, policing, utilities and communications. All would contribute to and share equally in the wealth created by this ideal society. Should a country establish such a system its principal export would probably be flying pigs.
- 6.5 There are many visions of Utopia and it is likely that none will ever see the light of day. Like most visions of perfection, their reduction into reality requires a departure from perfection and a balancing of the various elements that exist so as to obtain the best and fairest compromise.
- 6.6 We agree that equality of voters within an electorate is one of the elements in a perfect system. However, it is not to the exclusion of all the others – especially so when an

insistence on the rigorous application of one of the principles of a fair system to the detriment of the others actually makes it less fair.

- 6.7 In his submission to the Committee, Professor Greg Craven, Dean of the University of Notre Dame Australia Law School, observed that one vote one value was a laudable goal, but that it could never constitute a complete code of fairness:

“In the first place, electorates may contain precisely the same number of electors but return a Parliament that is entirely unreflective of popular opinion, either because the boundaries of the electorates are themselves so drawn as to minimise the representation of particular parties and to maximise that of others, or because a given party narrowly but consistently achieves victory in a disproportionate number of electorates, so achieving parliamentary representation considerably in excess of its actual percentage vote.

Secondly, and arguably more importantly in the present context, I have no doubt that a strict application of the philosophy of “one vote, one value” not only is not an intrinsic feature of our system of representative democracy (as was recognized by the High Court in the case of McGinty), but that an over-emphasis upon that concept may, in particular circumstances, be positively harmful to that concept.”⁶⁷

- 6.8 Professor Craven goes on to argue that it would not be in the interests of representative democracy to create an electoral system that has electorates with an equal number of voters where that system has the effect of muting the articulation of strong and legitimate interests within the community.⁶⁸
- 6.9 In the opinion of this minority of the Committee, insistence in such cases indicates either an element of single-minded fanaticism or of cynical political advantage.
- 6.10 Of course, the underlying principle of equality of numbers has a part to play in determining electoral boundaries, but it is just one of the matters to be taken into account when determining a fair, democratic, representative parliamentary system. Giving it the name one vote, one value begs the question whether those equal numbers actually do give equal value. It is an emotive mantra that gains sympathy because it assumes the outcome of the process without subjecting it to scrutiny. A better adage

⁶⁷ Submission of Professor G.J. Craven, Dean of the University of Notre Dame Australia Law School, dated October 17 2001, p. 1.

⁶⁸ *ibid*, p. 2.

to represent what the current Labor Government is doing to rural and remote people is “Out of sight, out of mind”.

- 6.11 The Labor Party keeps repeating that we should have equal voter numbers because it is a fundamental principle of democracy.⁶⁹ It seems to think that you can gain acceptance of it by continually repeating it as an act of faith without ever having to justify it.⁷⁰
- 6.12 Their answer to the problems that arise by preferring one principle over all others is to say that you cannot move from the position.
- 6.13 Unfortunately, a view that grew in the Labor Party from a historical situation in another country, in which the whole country is smaller than many of the electorates in Western Australia cannot be accepted by the public as a whole just because the Labor Party believes it. Certainly, the property qualification in this State was another bitter matter of contention with the Labor Party for years. But it was well put by the Shire of Ngaanyatjarraku who twice responded to our request for written submissions but whom the Committee resolved there was no time to visit.⁷¹ The Shire of Ngaanyatjarraku suggested that there could be good vote weighting and bad vote weighting.⁷²
- 6.14 The argument over rural vote weighting and equal voter numbers arises because there are these competing principles at work, probably mixed with a good dose of self-interest. This is not unusual in politics. The question in this debate should be as to what the principles are and how they should be matched in a fair and democratic system?

Equal voter numbers does not guarantee a fair, representative democracy

- 6.15 Equal voter numbers certainly does not guarantee a fair, representative democracy. The classic gerrymander, where boundaries are drawn so as to place your opponents in a few impregnable safe seats, while retaining a reasonable majority in the bulk of the seats is usually illustrated using electorates of equal size. Fairness clauses seek to address this type of problem.

⁶⁹ Submission of the Western Australian Branch of the Labor Party, undated, p. 8.

⁷⁰ Transcript of evidence of Mr Larry Graham MLA, Member for the Pilbara, October 30 2001, p. 11.

“If we want electoral reform, we start over and we start with that premise that the Canadians have adopted; that is, all of those things, including ethnicity, regional boundaries, isolation and communication, be taken into account as the primary factor, and that the secondary factor be one vote one value.”

⁷¹ Decision of Committee November 2001, Hons. Peter Foss, George Cash and Paddy Embry MLC in favour of visit; Hons Jon Ford, Adele Farina, Kate Doust and Giz Watson MLC against.

- 6.16 The ultimate in equal value votes is the full participatory democracy that exists at every level of governance in Switzerland. The benefit propounded for it is that citizens vote on issues rather than on personalities and politics. It only works where citizens are informed. Swiss citizens claim they are more used to informing themselves on issues because these referenda occur by written ballot four times a year. Quite apart from the absence of a culture where citizens are used to informing themselves on issues, there are obvious differences in Western Australia. The size of the State, its widely and sparsely scattered population, the lack of services and communications and the cultural problems in implementing it would make a transplantation of the system very difficult.
- 6.17 It would also be worth putting to the Swiss in one of their referenda whether they would be interested in implementing a system in which the whole of Europe voted on issues that would apply throughout Europe and to have decisions affecting them, participated in by people as far away as Istanbul and Moscow. Given the Swiss history of independence it is likely (a) that they would reject it and (b) that it may be a system that only works in a close knit community. There is no doubt that there is a wish to have some control at a local level over affairs that are currently determined by State and Federal Governments and this has led to calls for secession as a solution.⁷³
- 6.18 If you were to reduce the total number of parliamentary seats to a mere handful, say four – even though they had an equal number of voters, this would also plainly be unacceptable. The smaller the number the greater the risk of dictatorship or oligarchy. But the biggest problem is that no person or small group of persons could possibly physically represent the entire State nor could they at the one time hold all the competing views and interests that exist throughout the State. Representative democracy works by representing the diverse views and interests in a microcosm of the community as a whole. That representation takes place not only in the debates and proceedings of Parliament, but also in participation and availability in the community represented.
- 6.19 Furthermore, it is clear that such a Parliament would be dominated by the bulk of the population living in Perth. Country issues would have little effect on whether the person was elected or not and are likely to have little effect on the thinking and actions of that person.

⁷² Submission of the Shire of Ngaanyatjarraku, dated October 22, 2001, p. 1.

⁷³ Transcript of evidence of Mr Larry Graham MLA, Member for the Pilbara, dated October 30 2001, p. 12.
“People say that if we split Western Australia, how would the north west survive. That is a fair question. How the hell would we got on apart from diamonds, gold, pearls, iron ore, gas, petroleum, fishing? I guess we have bugger all except tourism and pastoralism! We do not have much! We would be an incredibly wealthy state north of the twenty-sixth parallel. If it were in my power to do it today, I would do it.”

- 6.20 Does merely taking a position somewhere in the middle where you have a limited but maybe large, number of representatives but keep equal voter numbers, solve these problems?
- 6.21 Certainly it is not sufficient in itself. This can be illustrated out of the country/city context by examining a notional metropolitan electorate.
- 6.22 For instance, assume a seat spread across the Swan River so that it contained both Applecross and Nedlands. The suburbs are alongside each other so to speak and share common interests, but the Member could rightly complain that it was very inconvenient to service both parts and very inconvenient to the constituents. Such an argument is so strong that it is most unlikely that an electorate of that nature would even be proposed in the city.
- 6.23 Alternatively, you could have a wedge of an electorate that encompassed massively diverse interests – such as an electorate that started at Fremantle and went inland along the river ending up in the industrial area of Canning Vale. Of course that would never even be proposed for the metropolitan area but it is remarkably akin to what is being proposed for the suggested seat of Gascoyne that starts on the coast with Carnarvon and Exmouth and goes to the Central Desert on the South Australian border taking in places such as Meekatharra, Wiluna, Leonora, Warburton and Giles. In fact, it manages to combine the geographical inconvenience of the first example with an even greater diversity than the second. It is this lack of recognition of the consequences even of the present system that frustrates regional and remote citizens.
- 6.24 Section 7 of the *Electoral Distribution Act 1947* seeks to address some of these concerns when it directs the Electoral Distribution Commissioners to give due consideration to:

“7. Matters to be considered in dividing the State into regions and districts

...

(a) community of interest

(b) means of communication and distance from the capital;

(c) physical features;

(d) existing boundaries of regions and districts;

(e) existing local government boundaries;

(f) ...”

- 6.25 This is repeated in s16L of the Electoral Amendment Bill 2001.
- 6.26 Rural and remote region residents would argue that this section has a totally different meaning in the city from that which it has in their area.
- 6.27 In fact many remote and regional electorates have both a multiplicity and inconsistency of interests as well as geographical barriers that make the Nedlands Applecross example sound like child’s play. To this you can add problems of remoteness and lack of communication and transport.

Justification of rural vote weighting

- 6.28 Rural and remote electors justify rural vote weighting on the basis that it is fair. For this they have two grounds:
- 6.28.1 To ensure reasonably sized and manageable electorates. The country population is sparser than in the cities, thus leading to electorates with a larger geographical area. These electorates are physically too big to service properly, which in turn leads to poorer access to this service along with, maybe not uncoincidentally, other services. Rural vote weighting can reduce the impact.
- 6.28.2 There are more people in the city in absolute terms than in the country. This locks country people into a permanent minority in the principal interest that they share. This necessarily feeds back into the first problem. Queensland, where there is a substantial country population in significantly sized rural towns, does not suffer as significantly from this problem. On any issue affecting country Western Australia there is just not a sufficient voice for country people. Party discipline aggravates this situation. This situation would be exacerbated if rural vote weighting were abolished.

Compromise is needed as alternative remedies have been rejected

- 6.29 Residents of rural and remote areas say that even with rural vote weighting, the electorates are unreasonable to service and impossible to represent adequately. How much more will it be difficult if rural vote weighting is removed?
- 6.30 Another answer would be to keep small country electorates but to make up the equal numbers by adding metropolitan voters to them. So that the metropolitan voters did not dominate the attentions of the Member you would have to select isolated streets from all over the metropolitan area so that the principal population centre was in the

country. Of course, this solution is immediately seen as absurd. However, it has a ring of familiarity and all too sharp reality to many country residents for whom it would almost duplicate their current experiences, which will be exacerbated under the proposals. Take for instance, the proposed Gascoyne electorate

- One set of electors separated from others by more than 1,000kms
- The Member having to spend most of his time away from their part of the electorate
- Being isolated in small communities
- Never meeting people from the remainder of the electorate
- Having a Member with limited opportunity to gain local knowledge and even less time to understand their problems
- No community of interest
- Huge costs if they wanted to see their Member in the electorate office
- Not being able to communicate with their Member because of the poor communication resources in the Member's area

6.31 It would differ in one significant respect in that they would not have to send their children 1,000kms to school and they would have ready access to government utilities, public transport and health services.

6.32 This was put to the large crowd at the public meeting at Wagin following the hearings by the Hon Peter Foss MLC:

*“Hon PETER FOSS Your proposition that we have one vote, one value in Albany and Bunbury is interesting, because I still do not think there would be quite enough people to give you a whole seat, but what you could do is add a bit of the metropolitan area to them and then each person in the metropolitan area would know what it was like to have a member who was 400 miles away”.*⁷⁴

and was received with a roar of recognition.

⁷⁴ Hon Peter Foss in transcript of evidence of Mr Terry Waldron MLA, Member for Wagin, November 4 2001, p. 3.

- 6.33 Of course, one answer to this if you wanted to set reasonably sized country electorates but retain equal voter numbers is to increase the number of Assembly Members massively. This would never be proposed because it would be an unpopular if not unacceptable extra cost to city voters who are quite content with the population and geographical size of city electorates.
- 6.34 The Pastoralists and Graziers' Association (PGA) referred the Committee to a poll conducted by *The West Australian* newspaper on July 2 and 3 2001,⁷⁵ in which only 33% of the 401 people in metropolitan and rural areas of Western Australia surveyed supported the introduction of electoral reforms based upon the principle of one vote one value.⁷⁶
- 6.35 The Committee observed that a number of people seemed to confuse the concept of one vote one value with first past the post and the optional preferential voting system as currently operating in other states such as New South Wales.
- 6.36 It is unreasonable to insist upon equal voter numbers if you are not prepared to meet the proper cost of proper implementation. We do not suggest that there be such an increase - we suggest that a proper compromise between cost and adequate sized electorates has been reached already under the current Act. There is a demand by country people to maintain their current representation and no great concern on the part of city voters to have any more representatives. Such demand as there is for equal voter numbers comes not from the masses but from parties who have converted it from one of the principles of a fair system into an article of faith – a faith they have been prepared to depart from, from time to time when presented with real examples against their own interest.⁷⁷ It is interesting to visit the debates on the 1947 Electoral Districts Bill in which the then Labor Leader of the Opposition Mr Wise and a senior Labor Member, Mr Hawke spoke vehemently against the notion of one vote one value.
- 6.37 Hon FJS Wise stated:

*“With regard to the question as to whether the metropolitan area should have a reduction in the value of its votes, the fact remains that if one vote were to have one value and we were to permit that evil to exist, it would mean 35 seats for the metropolitan area in this Assembly”.*⁷⁸

⁷⁵ “Vote change rejected”, *The West Australian*, Monday July 9 2001, p. 4.

⁷⁶ Submission of the Pastoralists and Graziers' Association, dated November 7 2001, p. 2.

⁷⁷ Hon Bert Hawke MLA; Hon Frank Wise MLA.

⁷⁸ Hon F J S Wise MLA, *Hansard*, Legislative Assembly, December 3 1947, p. 2369.

“If we were to allow ourselves to be dominated by the idea of representation upon a population basis, an altogether disproportionate number of seats would be concentrated where the bulk of the population is located. That, of course, would include, as I have already mentioned, the areas immediately adjoining the metropolis. It would be foolish to adopt the line of argument followed by the Attorney General in making Queensland the basis of comparison. We cannot compare the incomparable.

...

My final word is that this is not a fair Bill, either in the representation it will afford or in the quota presented. It is not reasonable to suggest that votes should be equal at Yanchep and Ravensthorpe. It is fair that the interests of people at Peak Hill warrant only the same voting power as that given to an area within 10 miles of the city. The Bill, in that and many other respects, I submit, is not a fair one, and on the argument advanced when similar Bills have been before the Chamber, it is not wanted by the community, even if it were a fair Bill.”⁷⁹

6.38 Hon ARG Hawke stated:

“...Because it is a travesty of justice, because it inflicts upon people in districts far removed from the metropolitan area a penalty they do not deserve to suffer.”⁸⁰

This is a centralisation Bill in every sense of the term. It will swell further the already swollen representation of the metropolitan area. It will lay the foundation for a majority of the members of this Assembly to come from the metropolitan area within a reasonably short period of years. I care not whether the Government be Labour or anti-Labour, I care not whether the majority of the members of the Assembly be Labour or anti-Labour, but if such majority comes from the metropolitan area then, as surely as night follows day, we shall have intensive centralisation.”⁸¹

6.39 Mr Harry Reeves, at the hearing in Mount Barker, had another pithy way of putting it when he read a letter that he had written to a newspaper:

⁷⁹ *ibid*, p. 2377.

⁸⁰ Hon A R G Hawke MLA, *Hansard*, Legislative Assembly, December 3 1947, p. 2496.

⁸¹ *ibid*, p. 2497.

“Just what does “One Vote - One value” mean? Mr McGinty jumps on every soapbox to expound the “fairness” of equal representation but he avoids true equality. We are not all equal physically, financially or intellectually and in advanced countries we provide counterbalances where they are necessary and desirable. We acknowledge the fact and make concessions.

When we have genuine EQUALITY of life then the jingoistic “One Vote One Value” will have a moral justification.

When every rural voter has a bitumen road to his front gate, when he can turn on a scheme water tap and Western Power. When every child has access to the same curriculum and the same standard of teaching and facilities. When the education system provides these on a “live at home” daily basis for all students....Then we can expect “One Vote One Value”.

When the price of petrol, ‘phone calls, bread and paper is the same to all. When every facet of medical attention - consultation, diagnosis or procedure is within a half day’s reach - then we can consider equal voting rights.

When “One Vote One Value” means that every voter can access their Local Member’s office within a half hour of leaving home and your representative is no further from you than your local polling booth...then it will have meaning.

Or are we really heading for a repeat of Queensland’s history where under a one house system and a so called “One Vote One Value” labor ruled for 40 years in one of the world’s great gerrymanders until the Gair Labor split allowed Frank Nicklin into power and eventually a Country Party led coalition to redress it with what Labor would see as an even greater gerrymander?”⁸²

6.40 Hon Paddy Embry MLC has commented in the following terms:

- Regional interests need representation and this would prove very difficult if the seats of Roe and Merredin were combined, as the interests of the two major towns and communities are so different and so far apart.

⁸² Transcript of evidence of Mr Harry Reeves, member of the public, November 5 2001, pp. 1-2.

- People are leaving the outer areas of the Agricultural and South West Regions and moving to either Perth or to the larger coastal towns such as Albany, Busselton, Bunbury, Mandurah and Geraldton. This will lead to the continuous amalgamation of outer rural seats and will make it increasingly difficult for a district to have its voice heard, let alone to make a positive difference in Parliament.
- Politicians are supposed to represent their electorate in a push for a larger slice of the economic cake that provides the services most people are demanding. We are now experiencing the removal of such services from the outer areas in order to pander to and satisfy those who live in the metropolitan area.
- Vote weighting in favour of the country is needed to help produce a balance in the scales of fairness. The proof that the status quo has succeeded in producing that balance, is, as Colin Nicholl, President, Western Australian Farmers Federation (WAFF), says in his supplementary submission, that by the year 2004, the Labor Party will have held government in the WA Parliament for twelve out of the past twenty years. This is a reasonably even result for both the socialist and conservative sides of politics.
- The recent finding of the High Court in *McGinty v Western Australia*⁸³ on the electoral system in Western Australia noted that country vote weighting is 'fair.' Logically it follows that the proposed change to dismantle the rural vote weighting would result in an unfair system.

The generation of wealth

- Country people do not feel the need for a weighted electoral vote because they earn most of the wealth, but rather, because most of the export income is earned outside Perth, it is imperative for Australia's future that it remains viable for them to remain in the outlying regions earning that income.
- The main reasons for people leaving rural and remote areas are:
 - Lack of profit in agriculture.
 - Lack of quality education for their children.
 - Lack of health care and aged care facilities.
 - Lack of job opportunities.

⁸³ (1996) 70 ALJR 200.

- Lack of public transport.
- Lack of modern communication.
- The cost of country living is so much higher than in the city because:
 - Petrol prices.
 - Vehicle running costs other than fuel.
 - The distances that must be travelled for supplies, socialising and sport.
 - Telephone calls.
 - Connection to the electricity grid and telephone lines.
 - Water.
- Country people believe that their present deal is unfair and that it will be considerably worse with fewer country Members of Parliament to represent them.
- If country electorates increase in size the amount of time that their Member can spend in any given area is diminished. People wish to speak with their representative, not his office staff.
- Country people foresee an even greater reduction in government services as their political representation lessens.

Equality of Voice

6.41 Many witnesses who addressed the Committee at its public hearings went further and said that these difficulties are in substantial measure due to lack of equal representation.⁸⁴ Assuming that the Government had the political will to meet the concerns of country people as to adequate access to representation, would this be enough? Many witnesses would say that it is not. They say that there is a clear need to maintain a voice that will be heard in the city. At the moment, they say, country voices are drowned by the loudness of the demands from the city. Our system is based on meeting the demands of our electors and the demands, though not the needs,

⁸⁴ This was a recurring theme. See for instance, the transcript of evidence of Cr Kevin Richards, Shire President, Shire of Roebourne, October 31 2001, p. 4, and the transcript of evidence of Hon Mark Nevill, October 29 2001, p. 4.

of city electors exceed those of the country. As was said by Mr Tony Hassell, at the hearing in Wagin:

*“Pork-barrelling is part of our system. The pork-barrel will end up in Perth if 75 per cent of the seats are in Perth. There would not be much left over. Places where the money gets spent is in the marginal seats. This is democracy at work whether we like it that way or not.”*⁸⁵

- 6.42 Country residents do not argue that equal voter numbers has no place to play in our political system – they just add that a purist attitude to it is unreal, and it should not overrule the factors set out of s7 of the *Electoral Distribution Act 1947* nor effectively make those other factors impossible to cater for, except in the city, as they would argue that the current Bills would do. Mr Harry Reeves, at the hearing in Mt Barker, made an excellent point as to the effect the amendments will have on decentralisation:

*“Obviously the loss of country seats will lead to greater centralisation than people realise; and an example is what is happening in the Mt Barker-Denmark area. Obviously we will still see Stirling, Moore, Avon and Roe. They will not disappear. The names that will disappear will be Albany, Bunbury, Geraldton and so on. We will not get rid of those nice sweet names, but we are going to have a seat based on Bunbury, a seat based on Albany, a seat based on Geraldton, possibly a seat based on Port Hedland, and a seat based on Kalgoorlie. That is probably going to be it in the country. Those places are already becoming absolute centres and are as dangerous to the future of country towns and country people as is the general concept of everything going to the city.”*⁸⁶

- 6.43 This is echoed by the submission of the Liberal Party of Australia (Western Australian Division) Inc. which stated that:

“[T]he seats most likely to disappear from the South West Region are those that cover rural communities, notably Stirling and Murray-Wellington. Small Shires and small towns throughout the State will

⁸⁵ Transcript of evidence of Mr Tony Hassell, Chairman, Central South Regional State Council, November 4 2001, p. 3.

⁸⁶ Transcript of evidence of Mr Harry Reeves, member of the public, November 5 2001, p. 2.

*have a greatly reduced voice, often swamped by larger regional centres.*⁸⁷

- 6.44 The Liberal Party of Australia (Western Australian Division) Inc, also stated in its submission to the Committee that fair representation and rigid equality of enrolments are mutually exclusive in a State the size of Western Australia.⁸⁸ A similar view was expressed by Hon Christine Sharp MLC in an article in *The West Australian* newspaper:

“WA has one of the most centralised populations anywhere in the world.

*Three-quarters of its entire population live in just one urban area although the State covers one-third of a continent. A purist system of vote equity does not fit well with our extreme demographics.”*⁸⁹

- 6.45 The Liberal Party of Australia (Western Australian Division) Inc further stated:

*“The Liberal Party listened to the strong reaction from rural people several years ago when moves towards “one vote one value” were contemplated in the aftermath of the Commission on Government Reports. We are strongly of the view that our electoral system does not require radical change.”*⁹⁰

- 6.46 The PGA has asserted that the changes are a real threat to a democratic system:

“In our view, One Vote One Value is not the fair and equitable system its promoters claim, and represents the most serious challenge yet to the rights of country West Australians.

To us it is a proposal that will not only make rural people irrelevant, - it will destroy forever their right to have their concerns and issues addressed in the Parliament.

...

⁸⁷ Submission of the Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, p. 2.

⁸⁸ Submission of the Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, p. 1.

⁸⁹ Hon. Christine Sharp MLC, “Upper House Crucial for Bush”, *The West Australian*, November 2 2001, p. 20.

⁹⁰ Submission of the Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, p. 2.

*If it proceeds you will no longer be representing the Parliament of Western Australia – but the Parliament of Perth.*⁹¹

- 6.47 With an area in excess of 2.5 million square kilometres, and arguably the largest State in the world,⁹² with a total population in excess of 1,861,000⁹³ of which more than 1,364,200⁹⁴ reside in the Perth metropolitan area, there is an argument that if there was ever to be an exception to the concept of one vote one value it would be in Western Australia.
- 6.48 The Liberal Party of Australia (Western Australian Division) Inc notes in its submission that the Government is not, in fact, implementing its stated policy of one vote one value, as the device of “dummy electors” to be established by the Bills negates this principle, as does the fact that non metropolitan vote weighting in the Legislative Council is unaffected by the Bills.⁹⁵ It is a little hard to see it as a matter of absolute principle, when in its own legislation it recognises the unfairness of a rigid application. Unfortunately, its allowance for only one and extreme exception indicates both that it has no real understanding of the problem and that it has seen political advantage in responding to rural vote weighting only in the area where it is comfortable that it will receive the preponderant vote.
- 6.49 This taken with the speed that the government has insisted upon in dealing with the matter and the manipulative devices it has used to try to get round the entrenchment provisions in the *Electoral Distribution Act 1947* makes it quite clear that principle is the last thing in its mind and it will stop at nothing for perceived electoral advantage – no matter what the harm that ultimately may occur to the State.

The nature of representative democracy

- 6.50 Representative Government is not just about voting and power. The term ‘one vote one value’ seems to concentrate on one day in 1,461 – voting day. Certainly, it is an important day. It is the day when the people determine the party that will govern. But the job of Parliament and its Members goes far beyond that single day. There are another 1,460 days when each person in both country and city are entitled to have their voice heard and their needs attended to.

⁹¹ Submission of the Pastoralists and Graziers’ Association, dated November 7 2001, p. 1.

⁹² “Fast Facts – Overview”, at Internet site: http://www.westernaustralia.net/fast_facts/index.shtml.

⁹³ Australian Bureau of Statistics, “Australia Now”, population statistics for 1999 at Internet site: <http://www.abs.gov.au/ausstats/abs%40.nsf/94713ad445ff1425ca25682000192af2/ab30884dddec785fca2569de002139d0!OpenDocument>.

⁹⁴ *ibid.*

⁹⁵ Submission of Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, p. 5.

- 6.51 It is not just a matter of spreading Members equally by number across the electorates, but also of access and availability. The larger the electorate and the more difficult it is to reach the electors then the more time is spent, not only in travelling within the electorate but also in travelling between the electorate and Parliament for the many sitting days.
- 6.52 Country people also say that their needs are evidently greater because they do not have the Government services that city dwellers take for granted in health, education, housing, police and transport to mention just a significant few.
- 6.53 This is well put by Mr Colin Nicholl in his written submission:⁹⁶

“Parliament should be about representation and every Australian should have reasonable or easy access to the person who represents them in Parliament. In the metropolitan area this is the case because most members of Parliament have their offices in the local shopping area. They are within about 15 minutes of travel of most of their constituents. In fact I pass my local member’s office whenever I do shopping in Perth and his office is less than 5 minutes from my door. He is also a local telephone call away if I wish to speak to him. If he is attending Parliament he is only 20 minutes travel away from where I reside. Most people in the metropolitan area would be of a similar circumstance.

In the seat of Merredin where my business is I am 2 hours travel to my member of Parliament and 4 hours if he happens to be in Parliament. I have had more reason to seek representation on matters affecting my business in the rural electorate than I have had in the city. The sorts of issues I have had to raise with my country member have been issues dealing with the Australian Building Code on several occasions, education, school bus routes, air conditioning of the local school as well as transport issues, both road and rail. Water is another issue that I have had to raise.”

⁹⁶ Submission of Mr Colin Nicholl, General President the Western Australian Farmers’ Federation, dated November 7 2001, pp. 2-3.

The role of the Country Members of the Legislative Assembly (MLAs)*Differences between rural and city MLAs*

6.54 A number of witnesses said that they considered that country people had different expectations of country Members of Parliament and that consequently country Members had a different role, either in character or degree than their city counterparts.

Observations of Hon Paddy Embry MLC

6.55 Hon Paddy Embry MLC observed:

- Rural MLAs are invited to all school functions such as sports days, graduation ceremonies, special functions and assemblies for the various schools in their electorates. There tends to be a large number of small schools in rather remote areas.
- Because of the lack of Government Departments in the country MLAs are often asked to help in finding specialists for health care, help with government assistance grants that may be available for special needs, for example, in times of agricultural hardship, help with filling out forms for government assistance such as Austudy.
- Country people often take Family Court issues to a local MLA to seek advice. This would not usually happen in the city as there would be an alternative source for information.
- The greater distances involved in country electorates means that the Member is involved in a huge amount of travelling to meet with constituents as they would rarely do the required miles.
- The long distances travelled throughout the electorate means that there is a large amount of time spent in this activity. This is non productive time for the rural MLA but the city MLA does not have those restraints.
- Further time is spent in travelling between Parliament and home; once again time that the city MLA is able to use on business matters rather than it being non productive.
- Shire Council meetings have to be attended and once again, because of the extreme distance involved it can take an inordinate amount of time. It is an important way of getting to know the problems and difficulties of a particular

area. A city Parliamentarian could probably attend two in a day should they wish, but that would be impossible in a country electorate.

- Country people have a great need to know their Parliamentarian and talk their problems over face-to-face. Their expectation is that the Parliamentarian will roll up their sleeves and help.

Some of the evidence

6.56 As the evidence of Mr Colin Nicholl, General President, WAFF indicates, country people look to their Members for a wider range of services than their metropolitan counterparts. This is in part due to the lack of government services provided and the level of decision making of such public servants as are stationed outside the metropolitan area.

6.57 As the most fundamental change that the Bills, if passed, introduce will be a reduction in the number of MLAs who represent country electorates (although no reduction in the total number of MLAs will occur), it is useful to consider the work that country MLAs do, and how it differs from the work of metropolitan-based MLAs, and the work of Members of the Legislative Council (MLC).

6.58 Country MLAs provide significant input to governments on issues such as the rationalisation of government services in the country. As one witness told the Committee:

“[country] people tend to go to their local members rather than to bureaucrats.”⁹⁷

6.59 Country people expect their MLAs, like metropolitan electors expect their MLAs, to know their electorates and the issues faced by the communities in them:

“As an elector or constituent, if I have concern about some matters of an administrative nature - perhaps regarding a poor service I have received from a government agency or a query about the location of a stop sign on the highway into town - I can ask my local member face to face to investigate these matters. As my local member, I would expect him or her to know where that government office was located and the name of the officer in charge or the dangerous intersection to

⁹⁷ Transcript of evidence of Mr Jim Fraser, Chief Executive Officer, Shire of Coolgardie, October 21 2001, p. 2.

which I am referring. In short, I would expect him to know my town and my region and that he has a community of interest."⁹⁸

- 6.60 The Committee heard evidence that some of the larger country electorates have around 30 schools and up to 20 local governments which need to be serviced by the local MLA.⁹⁹ An important part of an MLA's representation of a community is to be seen to be a part of it, and to attend a minimum number of community functions throughout their electorate:

"People do not expect the local member to be at every function throughout the electorate, but they expect them to be at some key areas. If a local member wished to represent his electorate well he would want to be there. Their presence at P & C association prize nights for key functions and civic functions shows that they are interested in what is happening in their community and is extremely important. The local member should be there whenever possible.

In the more remote areas in the State - I believe these areas could be clearly identified - members have no ability whatsoever to do that. A metropolitan member can attend three P & C association presentation nights in one night. A rural member in, for example, the electorate of Roe, has no hope whatsoever of attending three such functions in a week. He would be lucky to attend three a year because of the period in which they occur."¹⁰⁰

- 6.61 And again from Mrs Tish Campbell at the hearing in Manjimup:

"The benefit we have had to date, whether it was Dave Evans before Paul Omodei, and now Paul, they are people to whom we can relate as a human being, not as a politician. If we can relate to them like that they relate to you like that. They may not be able to address all our problems but they can give us a feeling that there is some hope and future."¹⁰¹

⁹⁸ Transcript of evidence of Ms Lee Mackin, member of the public, October 21 2001, p. 1.

⁹⁹ Transcript of evidence of Mr Ross Ainsworth MLA, Member for Roe, October 21 2001, p. 3.

¹⁰⁰ Transcript of evidence of Mr Ian Stanley Mickel, member of the public, November 4 2001, p. 3.

¹⁰¹ Transcript of evidence of Mrs. Tish Campbell, State Manager, Timber Communities Australia, November 5 2001, p. 1.

- 6.62 Country MLAs have close relationships with local governments, schools, parents and citizens' associations, sporting groups, farmers' organisations and other community groups who need assistance obtaining grants.¹⁰²
- 6.63 Country MLAs also regularly deal with many issues that metropolitan MLAs would not have to deal with often, if at all, such as:
- Shortages of dentists, doctors and other medical staff.
 - Obtaining basic water supplies.
 - Road quality and safety.
 - Basic telecommunications.
 - Public housing and electricity supplies.
 - Land degradation and salinity.
 - Need for infrastructure for industry.
 - Availability of land for housing and industry.
 - Native title.¹⁰³
- 6.64 It is the perception of many country people that government services and funding is provided on the basis of individual Parliamentarians' representations to the Government through the parliamentary process:

“Facilities, money and services are allocated to areas on the basis of representations made to the Parliament by the elected members for those areas. If you decrease the number of country reps and increase the number [of] city based reps then it stands to reason that the country will miss out and the city will benefit even more.”¹⁰⁴

- 6.65 They can see the differences between city and country spending by Government and believe they know the reason:

“The news of Sunday, 28 October, announced free bus and train travel for seniors in Perth. What are the country seniors getting?”

¹⁰² Transcript of evidence of Mr Allan Marshall, member of the public, October 22 2001, p. 2.

¹⁰³ Transcript of evidence of Mr Ross Ainsworth MLA, Member for Roe, October 21 2001, pp. 1-2.

¹⁰⁴ Submission of the Shire of Laverton, dated October 19 2001, p. 4.

*Nothing. This happens all the time. It is just another example of the city people having all the say. None of my relatives in the city would like any more city politicians. Why are you not listening to us?*¹⁰⁵

- 6.66 Mr Terry Waldron MLA, Member for Wagin, provided the Committee with a recent example of how country MLAs can effectively raise awareness in the metropolitan area of particular issues facing the country:

*“In my short time in the Parliament, I have realised that the Parliament does work, and it has focused my thoughts on the fact that this system is quite good. Earlier this year, a severe drought hit the area just east of here, and although the people in the city acknowledged that there was a problem, I do not think it really got through to them until a matter of public interest was raised in the Legislative Assembly, in which country members highlighted not only the fact that there was a drought but also the serious effect of that drought and the need to address that problem. Following that matter of public interest, to the credit of the Premier and the Minister for Agriculture, Forestry and Fisheries, they came to look at those areas. However, I have seen how the numbers work, and if that country representation and the voice of those country members had not been there, I do not think that would have happened. That is a working example of what this is all about”.*¹⁰⁶

The likely impact of the Bills on the representation of rural and remote area interests in Parliament

- 6.67 The CSCA considers that the concept of one vote one value, whilst being theoretically sound, is too simplistic in its application and fails to take into account the practical realities and difficulties associated with achieving effective representation for rural and remote electorates compared to the metropolitan electorates.¹⁰⁷ Some of the difficulties identified by the CSCA with respect to representation of rural and remote areas relate to physical isolation, lack of access to communications infrastructure, and the inability to generate a sense of empathy for rural and remote area issues and problems.¹⁰⁸

¹⁰⁵ Transcript of evidence of Mrs Lillian Aiken, member of the public, November 5 2001, p. 3.

¹⁰⁶ Transcript of evidence of Mr Terry Waldron MLA, Member for Wagin, November 4 2001, p. 2.

¹⁰⁷ Submission of the Country Shire Councils' Association of WA, dated October 17 2001, p. 4.

¹⁰⁸ *ibid.*

- 6.68 A vivid example of the difficulties faced by country Members in travelling to meetings within their electorates was provided to the Committee by the Federal Member for Kalgoorlie, Mr Barry Haase MP at the hearing in Kalgoorlie:

“If I were taking appointments in Karratha, under a previous high level of airline service, which is somewhat lacking today, I would leave Kalgoorlie, overnight in Perth, fly to Karratha, probably necessarily spend the evening in Karratha, fly back to Perth the next day and overnight in Perth, and return to Kalgoorlie the day after that. If I have one appointment for a face-to-face meeting in Karratha, it may take me three days to attend to that.”¹⁰⁹

- 6.69 The CSCA considers that it is arguable that due to the unique problems faced in rural and remote areas, a special vote weighting for rural and remote electorates is the only way to ensure effective representation for the people in those electorates.¹¹⁰

- 6.70 The submission of the Pilbara Regional Council noted that despite the existing vote weighting in favour of rural and remote electorates, country people still do not enjoy anywhere near the same level of services, be they roads, communication, education, health or police. In such circumstances where there is clearly no undemocratic advantage currently being gained by country voters, the Pilbara Regional Council asks why is there a need to change the existing system.¹¹¹ The Pilbara Regional Council expressed the following view, which was a commonly held sentiment amongst many of the witnesses that appeared before the Committee in public hearings:

“Council is yet to hear of one single city elector who has indicated that they feel that they are under-represented in parliament.”¹¹²

- 6.71 Under one possible redistribution under the proposed legislation,¹¹³ the following changes may occur:

“In the area covered by the Mining and Pastoral Region, two Legislative Assembly seats will be lost, leaving four Legislative Assembly seats in that region (Kalgoorlie, Kimberley, Pilbara, Gascoyne).”

¹⁰⁹ Transcript of evidence of Mr Barry Haase MP, Federal Member for Kalgoorlie, October 21 2001, p. 3.

¹¹⁰ Submission of the Country Shire Councils' Association of WA, dated October 17 2001, p. 4.

¹¹¹ Submission of the Pilbara Regional Council, undated, p. 3.

¹¹² *ibid.*

¹¹³ Based upon map provided by the Western Australian Electoral Commission,

In the area covered by the Agricultural Region, three Legislative Assembly seats will be lost, leaving four Legislative Assembly seats in that region (Geraldton, Moore, Beverley, Roe).

In the area covered by the South West Region, three Legislative Assembly seats will be lost, leaving seven Legislative Assembly seats in that region.

*The eight seats lost to the above regions will be gained by the metropolitan area, giving the metropolitan area a total of 42 Legislative Assembly seats.*¹¹⁴

6.72 The WAFF stated its opposition to the possible merging of the existing Roe and Merredin electoral districts into a single district at the first redistribution after the Bills are passed.¹¹⁵ The WAFF was of the view that a combined Roe and Merredin electorate would be an impossible electorate to represent, particularly given the distance between the two main towns in the electorate, being Merredin and Esperance. The WAFF expressed the opinion that there was no cultural or physical link (that is, community of interest) between these two major regional centres hundreds of kilometres apart.¹¹⁶

6.73 The Shire of Mingenew expressed concern that the electorate of Greenough would be affected by the passage of the Bills:

*“Based on a total State enrolment of 1,206,736 electors recorded by the WAEC (30 June 2001), the average district enrolment computes to 21,171 electors. Based on an August 2001 enrolment of 14,398 electors, it appears that the current Legislative Assembly electorate of Greenough would fail to meet the criteria laid down in the Bill.”*¹¹⁷

6.74 The Shire of Mingenew expressed the view that the community of interest in the electorate of Greenough was currently at an optimum level, and that any expansion in the size of the electorate would seriously reduce the level of representation for the existing electors:

¹¹⁴ Submission of the Liberal Party of Australia (Western Australia Division) Inc, dated October 29 2001, p. 2.

¹¹⁵ Submission of the Western Australian Farmers’ Federation, November 7 2001, dated October 19 2001 p. 2.

¹¹⁶ *ibid.*

¹¹⁷ Submission of the Shire of Mingenew, dated October 17 2001, p. 6.

“Any expansion of geographic boundaries to redress the rural/remote vote weighting imbalance may of itself, disadvantage electors by reducing the effectiveness of Member representation. Should a Member be forced to cover a vastly greater geographic area, he or she may encounter difficulty in correctly identifying and addressing the needs or issues of electors.”¹¹⁸

- 6.75 Another country electorate which the Committee was told was currently at optimum size despite its comparatively low population (10,275 electors as at June 30 2001¹¹⁹), is the district of Ningaloo:

“The distances Murchison residents must travel to meet with their local Member of Parliament are vast. For example, Meekatharra, being part of the Ningaloo electorate, has its Legislative Assembly representative located in Carnarvon, 600 kilometres away. If the State Government were to amalgamate a number of our country seats to form larger ‘super-electorates’, Meekatharra residents would most likely have even less contact with their member of Parliament and would not have their concerns adequately addressed.”¹²⁰

- 6.76 The Liberal Party of Australia (Western Australian Division) Inc, expressed the view that as country electorates are required to become larger, they will also become more disparate and the sense of community will be lost.¹²¹ The possible dilution of a community of interest in an electorate by drawing together disparate towns which are great distances apart into a single district with a single representative was also of concern to the CSCA, which holds the view that such electorates would be very difficult to represent.¹²²

- 6.77 The Shire of Dandaragan expressed concern that the transfer of eight country seats to the metropolitan area would mean decision-making would become dominated by the city:

“There is a real risk of less funding for key regional priorities such as rural health, road funding, agricultural support, salinity control, tourism, police to name but a few. The change to one vote, one value

¹¹⁸ *ibid.*

¹¹⁹ *Electoral Enrolment Statistics as at 30 June 2001*, Western Australian Electoral Commission, July 18 2001, at Internet site: <http://www.waec.wa.gov.au/frames.asp?section=electorate>.

¹²⁰ Submission of Mr Ross Atkins, dated October 15 2001, p. 1.

¹²¹ Submission of the Liberal Party of Australia (Western Australia Division) Inc, dated October 29 2001, p. 1.

¹²² Submission of the Country Shire Councils’ Association of WA, dated October 17 2001, p. 5.

*will mean that decisions on how a remote region's wealth is spent/distributed will be made by city based parliamentarians who will no doubt be using it to ensure the security of their own seats at the expense of rural WA*¹²³

- 6.78 The Shire of Plantagenet expressed its concern that any reduction in the number of country Members of Parliament would result in a much greater expectation by electors that their interests at the State level will be represented by local government, which the Shire stated was already stretched to the limit in representing the immediate local needs of ratepayers.¹²⁴ A similar view was expressed by Mr Trevor Delandgrafft, Senior Vice President of the WAFF, who is concerned that the passing of the Bills will put increasing pressure on the WAFF and voluntary community groups to lobby the Government on behalf of country people.¹²⁵
- 6.79 With regards to the likely increase in metropolitan Legislative Assembly seats by eight to 42 out of a total of 57, the Liberal Party of Australia (Western Australian Division) Inc expressed the view that:

*“It can be said that this Bill will result in the transfer of representation from where it is needed to where it will actually be resented by many electors as an example of “more politicians in easy seats”. It is not desirable to encourage such cynicism by an unwanted and unwarranted increase in metropolitan seats. While a few high growth outer suburban electorates currently have excessive enrolments, this would be rectified by the operation of the current Electoral Distribution Act 1947 through the redistribution due next year.”*¹²⁶

- 6.80 In their submission to the Committee, Mr Peter and Mrs Wendy Harkness referred to the reduction in country MLAs as leading to a reduction in the diversity of views being represented by Parliamentarians, with there being for every three MLAs that represent metropolitan electorates with similar interests, only one country MLA that represents the views of widely diverse communities based on mining, pastoral, farming, fishing and aquaculture industries.¹²⁷

¹²³ Submission of the Shire of Dandaragan, dated October 23 2001, p. 1.

¹²⁴ Submission of the Shire of Plantagenet, dated November 2 2001, p. 1.

¹²⁵ Transcript of evidence of Mr Trevor Delandgrafft, Senior Vice President, WA Farmers' Federation, October 22 2001, pp. 1-2.

¹²⁶ Submission of the Liberal Party of Australia (Western Australia Division) Inc, dated October 29 2001, p. 2.

¹²⁷ Submission of Mr Peter and Mrs Wendy Harkness, dated October 19 2001, p. 1.

- 6.81 Already country people believe there is ample evidence that government decisions are not being made in the best interests of the State but just to please the wishes of the city electors. They can see this getting worse.
- 6.82 An example of what can happen if this reform succeeds: this Labor Government has used old-growth forest policy to gain city votes and in the process the timber industry will be destroyed with thousands of country family lives being destroyed for no other reason than political gain.

Greater resourcing of Members representing rural and remote areas is not a substitute for representation

- 6.83 Given the difficulties experienced by the Committee in trying to visit the areas of the State affected by the proposed changes, the Committee received a number of very clear messages:
- 6.83.1 It was unable to determine what areas and towns to visit without the assistance of the local Member.
 - 6.83.2 Itineraries were proposed that proved to be nonsensical given the relative positions of the places, the distances and the available roads between them.
 - 6.83.3 Travel by land was not practical.
 - 6.83.4 For many places, a plane that could get into those places was far too slow and uncomfortable.
 - 6.83.5 It was easy to leave out places as too small, (for example, Warburton) but in time they turned out to be most significant. When their significance was recognised it was not always possible to redress the situation.
 - 6.83.6 There were cultural difficulties in dealing with aboriginal people which meant that much greater preparation was required to advise of issues to be discussed and greater time to enable that discussion to take place in a culturally sensitive manner.
 - 6.83.7 Meaningful discussion on issues is diminished unless they are fully canvassed and understood in the community.
- 6.84 In its submission to the Committee, the Labor Party acknowledged that there are difficulties experienced by Members of Parliament in representing large and remote electorates, but suggested that:

“[T]hese difficulties are better addressed, especially given technological advances, by providing additional resources such as staff, extra electorate offices, travel and communication facilities rather than maintaining an unfair and undemocratic electoral system. [Committee emphasis]”¹²⁸

- 6.85 The Labor Party argues that the fundamental principle of equality of representation should not be undermined by remoteness, history and assertions of a lack of administrative support, access or communications.¹²⁹ The Liberal Party not only disagrees with the Labor Party that it is fundamental but also argues that you cannot supplant a fair democratic electoral system by providing more resources.
- 6.86 The Liberal Party believes that all Members of Parliament need better resources and particularly remote and regional Members, but that additional resources should be provided as a matter of course, in any event.
- 6.87 Certainly, the larger the electorate, the greater the resources required. Additional resources that could assist country MLAs in representing an enlarged electorate may include the following:
- 6.87.1 Additional electorate staff.
 - 6.87.2 Additional electorate offices.
 - 6.87.3 Additional motor vehicles.
 - 6.87.4 A toll-free 1800 number.
 - 6.87.5 An Internet site and e-mail address.
 - 6.87.6 Increased charter flight allowance.
- 6.88 Although a number of witnesses believed that additional resources to country Members to pay for more charter flights within their electorate would be of benefit, other witnesses were sceptical of the ‘fly in fly out’ approach to political representation:

“Recently we have seen hospital expenditure cut. I cannot understand that in these areas. The Ravensthorpe hospital has lost over \$100 000 from its budget. Ravensthorpe is about 200 kilometres

¹²⁸ Submission of the Western Australian Branch of the Australian Labor Party, undated, p. 8.

¹²⁹ *ibid.*

from Lake Grace. If anyone had a child suffering badly from a problem like asthma - which I did once - it is a real problem. We only just got her to Lake Grace hospital in time. People have to experience these things. We cannot have fly in, fly out politicians buzzing in like blowflies. It will not work. That is what they will have to do. To drive a couple of 100 kilometres to a doctor and lose a child because people do not understand about the vastness of the area is not on."¹³⁰

- 6.89 Cr Kevin Richards, Shire President of the Shire of Roebourne at the hearing in Karratha advised the Committee that Members of Parliament were instantly recognisable when they visited the Pilbara:

*"State parliamentarians come up here and the most obvious thing is the airline ticket hanging out of their pocket."*¹³¹

- 6.90 Many of the written submissions received and the evidence gathered during public hearings indicated that people in rural and remote electorates would prefer to meet face-to-face with their MLA, rather than communicate with them over the phone, by e-mail, letter or through electorate staff:

*"The Western Australian Government has stated that this [legislation] will bring equality to the Parliament and that the "tyranny of distance" can be offset by members of parliament having extra electorate offices, staff, travel and communications facilities to provide effective communication. This will mean that extra funding will need to be allocated to support these extra resources, when all that the country people want is true representation. Not everyone has access to these facilities and would rather be able to contact their Member of Parliament on a "face to face" basis or at least have some form of reasonable access."*¹³²

- 6.91 It was also the personal experience of a current country MLA that electors preferred to meet face-to-face with their political representative:

"[T]he people in my electorate want to see me, not my staff. People ring my office, and my staff offer to assist, but they want to see me. I can give you some percentages, because I keep fairly good records in

¹³⁰ Transcript of evidence of Robin Iffla, member of the public, October 22 2001.

¹³¹ Transcript of evidence of Cr Kevin Richards, President, Shire of Roebourne, October 31 2001.

¹³² Submission of the City of Kalgoorlie-Boulder, dated October 18 2001, p. 1.

my office. Few people are prepared to allow my electorate officer to deal with the matter. They want to see me. They know I will understand the problem. The argument about giving rural areas extra resources is nonsense. It is more about promoting political parties than promoting representation. As long as I am in the Parliament, I will aggressively argue that. One of the sad things that I have lived through - a couple of committee members have been around for almost as long as I have - is the remarkable decline in the standing of members of Parliament over the last decade. Part of that is this nonsense about not being representatives. People want members to represent them. They want to touch the members and they want to understand them. They want the members to represent them; they do not want a paid employee. My excellent staff turn up at half past eight and leave at five o'clock to go home to their families. They do not worry about those issues, because I do not expect them to. They are not paid to do that, and it is not fair for them to worry. I am paid \$100 000 a year to do that. That is my responsibility, and I have heartily taken on that responsibility. I do not believe that any proposal about resources to replace the member is anything other than absolute nonsense. That will help to continue the decline in the respect for members of Parliament.”¹³³

- 6.92 A concern was expressed that most people in remote and rural areas do not have access to the same level of communications services and support as exist in metropolitan areas and so would be unable to benefit from a country MLA’s “virtual electorate office”. As Mr Barry Haase MP said of the Federal seat of Kalgoorlie at the hearing in Kalgoorlie:

“To suggest that the advances in communications technology address this problem is a nonsense. It assumes a disposable income level across the State equal to that in the city. It assumes that people can access computers and web sites because they will have the money to spend on the equipment and have access. It is a nonsense. About 14 per cent of electors are indigenous people. They do not have the resources to provide that equipment within their household. They cannot excess [sic] the wonders of high tech communications. To suppose that this practical anomaly can be addressed with the advances of communication technology is a nonsense.”¹³⁴

¹³³ Transcript of evidence of Mr Maxwell Wayne Trenorden MLA, Member for Avon, October 21 2001, p. 3.

¹³⁴ Transcript of evidence of Mr Barry Haase MP, Federal Member for Kalgoorlie, October 21 2001, p. 2.

- 6.93 It may be the case that there will need to be significantly greater resourcing of local government in rural and remote areas to ensure that local issues can be promoted. Local government already plays a significant role in assisting country-based Members in servicing their electorates. As the CSCA noted in their submission to the Committee:

“Individual Local Governments and their communities are central to the processes and strategies employed by serving Members and aspiring candidates in the elections context, so as to gauge prevailing attitudes and views on key economic, social and political issues.

These Local Governments also act as mechanisms by which the views of residents and the broader community on issues may be crystallised and brought to the attention of State and Federal Governments.

The role and relevance of Local Government in influencing key public policy outcomes is also further demonstrated by the fact that the Sector has been viewed as being an important proving ground for aspirants to future political office at the State and Federal levels.”¹³⁵

- 6.94 The Pilbara Regional Council made the following statement in its submission about the continuing relevance of representation at the State level in the event that greater pressure is to be placed on local government to represent country interests:

“Increasing the size of the regional electorates in the State will only make state politicians even more remote from their constituent communities and will inevitably increase speculation about the relevance of state governments in general. If the grass roots service delivery is to be achieved by local government why do we need two sets of politicians operating in Perth and Canberra. Perhaps we should get rid of state parliament completely and establish regional governing bodies which relate closely to their constituent communities.”¹³⁶

- 6.95 It is widely recognised that servicing non metropolitan districts and regions is extremely difficult. It is argued that these difficulties are better addressed, especially given technological advances, by providing additional resources such as staff, extra electorate offices, travel and communication facilities.¹³⁷ However, there is mixed

¹³⁵ Submission of the Country Shire Councils' Association of WA, dated October 17 2001, p. 3.

¹³⁶ Submission of the Pilbara Regional Council, undated, p. 4.

¹³⁷ For example, Australian Labor Party Submission, p. 8.

opinion whether increased resources and the use of modern technology by non metropolitan Members will compensate for the loss of country seats.

6.96 Some believe extra resources is not enough:

*“There remains a strong belief that the physical size and disparate character of WA actually precludes numerical equality if those electors in rural and remote areas are not to suffer a reduced standard of representation. Increased allowances and perks cannot compensate for the lack of accessibility of the representative in comparison to that enjoyed by the urban electors. Under numerical equality many non-metropolitan seats will increase in physical size and embrace very disparate communities, eroding community of interest.”*¹³⁸

6.97 Mrs Rosa Moyle, at the hearing in Manjimup, stated the following during an exchange with Hon George Cash MLC:

“Hon GEORGE CASH: As a country resident, do you find that face-to-face contact with your member is an important way of making sure that the member has local knowledge and can report that to the Parliament?”

Mrs Moyle: Very strongly, yes. Our current member of Parliament is a Liberal Party member and is in the Opposition. It has become a bit more difficult for him to get our concerns heard, but we still strongly believe that we need someone there to be able to talk with face-to-face - someone who understands our concerns. If we get someone from up the line, he just will not know what is happening here.

Hon GEORGE CASH: Some people have said all you need do is take the eight members out of the country and substitute them with additional telephones, or perhaps an additional office. Is that something you would subscribe to?

Mrs Moyle: No. Albeit they may hire good staff, it is just not the same. We have enough problems now. You ring up someone and they say you are on hold. You just get shuffled around from one office to

¹³⁸ Buxton J, “Western Australia, 1984: Some Problems in Representation”, in *Parliament and Representation in Western Australia*, Department of Politics, University of Western Australia, June 1985, p. 57.

the next and one phone call to the next. This would be the same. We need the representation here."¹³⁹

- 6.98 Hon Murray Criddle MLC, Member for the Agricultural Region, at the hearing in Geraldton stated:

"It needs to be clearly understood that the people in country areas want face-to-face communication with their politicians. If people think that we need further services, they should be put in now; we should not wait until later. It might be necessary for members to have another two electorate officers, or a research officer and an electorate officer, because the communication gap is there already."¹⁴⁰

- 6.99 Cr Kevin Richards, Shire President, Shire of Roebourne at the hearing in Karratha stated the following in an exchange with Hon George Cash MLC:

"Hon GEORGE CASH: Some people have said that if eight seats are taken out of country and put in the metropolitan area that all we have to do is give the remaining country members more phones and perhaps another office or some staff, and that is an equivalent substitute. Could you tell us about the value of face-to-face contact with a local member and the need for it in the more remote areas?"

Mr Richards: It is a basic right that people should have. Some years ago when they were mucking around with the boundaries at the election, they put the people of Wickham into the seat of Pilbara. It was quite funny. That would mean the people of Wickham would have a round trip of 500 kilometres to see their local member. That was tried four or five years ago. It seems that all we are doing is playing with the boundaries all the time. There is only so much you can do on the phone."¹⁴¹

- 6.100 Others, including the WAFF, hold the view that additional assistance with electorate travel expenses needs to be afforded to rural Members in view of the logistics of effectively servicing their constituencies.¹⁴² And further, that access to regional parliamentary representatives should be improved through such means as additional

¹³⁹ Transcript of evidence of Mrs Rosa Moyle, member of the public, November 5 2001, p. 1.

¹⁴⁰ Transcript of evidence of Hon Murray Criddle MLC, Member for the Agricultural Region, November 2 2001, p. 1.

¹⁴¹ Transcript of evidence of Cr Kevin Richards, Shire President, Shire of Roebourne, October 31 2001, p. 5.

¹⁴² Submission of Mr Andy McMillan, WA Farmers Federation, dated October 19 2001.

electorate offices in the larger electorates, local phone call services to contact representatives or electronic networking.¹⁴³

- 6.101 The question remains however, that if extra resources were provided to country Members to compensate for the loss of representation and to further assist country MLCs to service their electorates, how much is enough?

The allocation of regional portfolios to Ministers

- 6.102 In a press release in February 2001, the Premier Geoff Gallop stated that he was “confident that the four new Ministers who have been appointed to represent regional WA would bring the interests and concerns of their regions to Cabinet”.¹⁴⁴

- 6.103 The Government's four regional Ministers represent the following areas of the State respectively:

- Mid-West, Wheatbelt and Great Southern.
- Kimberley, Pilbara and Gascoyne.
- Peel and the South-West.
- Goldfields-Esperance.¹⁴⁵

- 6.104 The Government has also established a new Cabinet Regional Policy Standing Committee which is responsible for the “...*co-ordinated development of regional policies, the evaluation of the impact of Government policies on regional communities and the coordination of regional development across all areas of Government*”.¹⁴⁶

- 6.105 There was support for the above initiatives of the Government in several of the submissions received by the Committee:

“I would like to see improved Regional Influence in the Government of the day and I support the Labor commitment to retaining Ministers for the Regional Areas to champion Regional causes in cabinet. I

¹⁴³ Transcript of evidence of Mr Rodney Botica, member of the public, October 21 2001.

¹⁴⁴ “Premier says concerns of regional people a top priority”, Media Statement by the Premier, February 24 2001: <http://www.mediastatements.wa.gov.au/media/media.nsf/HTML/Ministers+Menu?openDocument>.

¹⁴⁵ *ibid.*

¹⁴⁶ “Labor Government delivers on election promise”, Media Statement by the Premier, February 19 2001, at <http://www.mediastatements.wa.gov.au/media/media.nsf/HTML/Ministers+Menu?openDocument>.

would like to see this become entrenched and in future the Executive Cabinets of Government contain Ministers for Regional Areas.”¹⁴⁷

6.106 However, there was little support for this as a substitute for having a local Member with whom they could interact and could carry their concerns to Parliament. There was degree of cynicism about visits from out-of-town politicians:

6.107 Mr Bob Iffla, at the hearing in Lake Grace, summed it up:

“We cannot have fly in, fly out politicians buzzing in like blowflies. It will not work.”¹⁴⁸

6.108 Mr John Mitchell at the hearing in Manjimup felt similarly:

“I do not believe that with a Minister for Peel and the South West we will get the same sort of representation that we would from our local member.”¹⁴⁹

6.109 In view of the fact that this legislation is progressing whilst there are four so-called regional representatives in Cabinet, in the face of clear opposition from the regions affected and apparently from a wide cross section of the community, no matter what their political allegiances, the suggestion that it will look after regional interests is laughable.

6.110 Perhaps the most ironic fact of all is that it was introduced and is being promoted by one of these very Regional Ministers – Hon Jim McGinty MLA. The reaction of the crowd at Manjimup to find out that the Hon Jim McGinty MLA was both looking after their interests and sponsoring the Bills indicates the proper cynicism that everyone should have over the benefit to regions of this change.

6.111 Mrs Tish Campbell, at a hearing in Manjimup on Monday, November 5 2001, made the following comments in an exchange with Hon Peter Foss MLC:

“Hon PETER FOSS: One of the suggestions made to us is that when country representation goes down the regional interests of various places can be represented by regional ministers. You may know that the recent Government allocated each region with a minister who is responsible. Your regional minister is Jim McGinty. What do you think of the concept that regions will be represented by a

¹⁴⁷ Submission of Mr Rodney Botica, dated October 11 2001, p. 1.

¹⁴⁸ Transcript of evidence of Mr Robin Iffla, October 22 2001, p. 2.

¹⁴⁹ Transcript of evidence of Mr John Mitchell, November 5 2001, p. 2.

minister in Cabinet when they cannot be represented so adequately in the Parliament?

Mrs Campbell: Slit all our throats now and save us the anguish, particularly if our regional minister is to be Mr McGinty, because he does not have the time of day for any of us. We cannot be represented.

...

Hon PETER FOSS: Perhaps I did not make it clear. The idea of having regional ministers has been implemented. You now have the Minister for the South West, who is Jim McGinty and who is looking after your interests in the south west.

*Mrs Campbell: He is not doing a very good job, so we should slit our wrists now.*¹⁵⁰

FINDINGS

Committee Findings - Unanimous

- 6.112 The Committee does not endorse any argument for vote weighting based on wealth or wealth creation.
- 6.113 The Committee agrees that there is no doubt that much of the wealth created in the country both ends up in and is the basis for wealth in the city or overseas.
- 6.114 The Committee believes that Government policy should encourage people to live in the country and further dissuasion to people living in the country should be avoided.

Minority Findings

- 6.115 A minority (Hons Peter Foss, George Cash and Paddy Embry MLCs) are of the view that if we are not to choke in our own numbers we should as a matter of self-interest, be encouraging decentralisation and rural and remote living. If country predictions are correct that reduction in representation means a further reduction in country living standards compared with those of the city, we can expect more people to move to the city, aggravating the problems of both and making this electoral imbalance even more extreme.

¹⁵⁰ Transcript of evidence of Mrs Tish Campbell, State Manager, Timber Communities Australia, November 5 2001, pp. 1-2.

- 6.116 A minority (Hons Peter Foss, George Cash and Paddy Embry MLCs) believe that to the extent that the supporters of equal voter numbers claim that their stance is based on principle, they lose credibility by being unwilling to assume the responsibilities that their principle imposes upon them and are blind to any other considerations that take into account the real needs of people and democracy.

CHAPTER 7

THE LEGISLATIVE COUNCIL AS A HOUSE OF REGIONAL REPRESENTATION

THE LEGISLATIVE COUNCIL

- 7.1 The Bills propose that the status quo in the Legislative Council be broadly preserved. However, there are possible implications for the Legislative Council, especially in regard to regional and rural representation.
- 7.2 Before considering the possible implications of the proposed legislation on the Legislative Council it is useful to briefly outline how the Legislative Council is currently constituted, its function and the role of the electoral system in this.

THE CURRENT ROLE AND STRUCTURE

The Role of the Legislative Council

- 7.3 Two of the most significant functions of the Legislative Council are:
- 7.3.1 *Monitoring and reviewing Government legislation, administration and expenditure.* This function is the most widely recognised and applicable to the Legislative Council of Western Australia. The Council is often called a “House of Review” because of its function of monitoring and reviewing legislation and scrutinising the Government’s budget and the administration of Government departments and other public agencies. The Government is formed in the Lower House, regardless of the composition of the Upper House. However, laws can only be made with the approval of both Houses. This gives the Upper House an important role as a check on the Government, particularly when the Government does not have a majority in the Upper House. In recent times the Government has needed to obtain the support of at least some non Government Members in order to pass legislation.
- 7.3.2 *Legislating.* Any bill, apart from a money bill, can be initiated in the Legislative Council. In recent times a restrictive interpretation of s46 of the *Constitutions Act Amendment Act 1899* has greatly limited the ability of the Legislative Council to introduce or amend bills. It is possible for the Upper House to play a pivotal role in the legislative process. For example, an Upper House constituted by multi-Member electorates, combined with the opportunity to introduce Private Members Bills, can allow Members of the

Legislative Council to take legislative initiatives which would not otherwise be likely in a party dominated and single member constituency based Assembly.¹⁵¹

How is the Legislative Council of Western Australia constituted?

History of the Legislative Council

- 7.4 The first electoral system of the Legislative Council was established by the *Constitution Act Amendment Act 1893*. The first election was held in 1894. The Legislative Council comprised 21 Members from 7 provinces, three Members in each province. The provinces were divided between one for the metropolitan area and six in rural areas. This translated to three Members for the metropolitan areas and 18 Members for the country areas. The heavy weighting toward rural areas was not considered extreme as it reflected the distribution of population throughout the Colony. The term for the Legislative Council Members was six years, with a third of the Legislative Council retiring every two years.
- 7.5 The Legislative Council maintained this structure and representation until 1965. There were minor changes as the balance of population in the Colony, and later State, shifted from rural and metropolitan areas and attitudes to the franchise became less restrictive. The division of seats was altered to 15 two Member provinces. The Metropolitan area was represented by 10 Members and the country areas by 20 Members. A further two provinces were added in 1975 and again in 1981. The term for Legislative Council Members was a fixed six years with half retiring every three years.¹⁵²
- 7.6 The system was changed in 1987 by the *Acts Amendment (Electoral Reform) Act 1987*. Provinces became regions and the current structure of the Legislative Council was established. For the first time the distribution of seats between the metropolitan and country areas became equal.

The current structure of the Legislative Council

- 7.7 The Legislative Council of Western Australia currently comprises 34 Members from six regions, three for the Perth metropolitan area and three for the remainder of the State. Seventeen Members represent Perth and 17 represent the remainder of the State. All Members have fixed terms of four years. Members of the Legislative

¹⁵¹ Griffith G, and Hrinivasan S, *State Upper Houses in Australia*, Background Paper No 1/2001, NSW Parliamentary Library Research Service, p. 80.

¹⁵² Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, Chapter 9, p. 324.

Council are elected at each State general election. The Members are elected from multi-Member electoral districts. These are:

- North Metropolitan - seven Members;
- East Metropolitan - five Members;
- South Metropolitan - five Members;
- South West - seven Members;
- Agricultural - five Members; and
- Mining and Pastoral - five Members.

Proportional Representation

7.8 The current system and the system proposed in the Electoral Amendment Bill 2001, support the notion that the electoral system of the Legislative Council ought to be different from that of the Legislative Assembly. The system currently used to elect Members of the Legislative Council in Western Australia is proportional representation (see glossary).

7.9 Proportional representation is advanced as the ideal electoral system for the Legislative Council, on the grounds that it will mirror the political preferences of the voters,¹⁵³ and ensure diversity of representation as well as encouraging a different range of views from those represented in the Lower House.¹⁵⁴

7.10 Further, the system of proportional representation is designed to represent, as accurately as possible, the range of community opinions. It aims at ensuring that the share of seats won in Parliament reflects the share of votes gained by parties and candidates and to reduce the barriers against the representation of minor parties.¹⁵⁵

The role of the electoral system in preserving the function of the Legislative Council

7.11 Electoral systems are a tool used to make certain that the purpose or role of Parliament is ensured and safeguarded. There are many electoral systems used throughout the world and there is no universally recognised perfect system.

¹⁵³ Buxton J, "Western Australia, 1984: Some Problems in Representation", *Parliament and Representation in Western Australia*, Department of Politics, University of Western Australia, June 1985, p. 60.

¹⁵⁴ Gregor J F *et al*, *Commission on Government Report No. 5*, p. 60.

¹⁵⁵ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, p. 273.

7.12 The COG Report stated that the electoral system for the Legislative Council should enhance the ability of the Upper House to act as a mechanism for accountability, review and scrutiny of the public sector. One element in achieving this goal is to ensure that the electoral system for the Upper House encourages the representation of a different range of views from those reflected in the Lower House. In addition, the COG Report states that the electoral system should moderate the influence of political parties so that the Upper House can play a distinctive role as a House that reviews the activities of government.¹⁵⁶

Rural Vote Weighting of electoral regions

7.13 The current system in the Legislative Council comprising Members representing regions within the State gives some guarantee that certain regions, particularly those that are remote from Perth, will always have some representation in the Western Australian Parliament, regardless of population. This is provided for by an electoral system that builds in substantial rural vote weighting, that is, a situation where parliamentary seats have unequal numbers of electors, in favour of the non metropolitan areas of the State.¹⁵⁷ There are 2.8 times as many voters per Member of the Legislative Council in the metropolitan area compared to the rest of the State.¹⁵⁸ This is done primarily to ensure that rural areas are provided representation and that rural interests are not overwhelmed by the metropolitan interest which is numerically dominant.¹⁵⁹

7.14 The system of rural vote weighting is not supported by all. Opponents of rural vote weighting believe that all votes should be of the same weight. It is argued that Western Australian electors should have equal parliamentary representation, that technological advances have improved communications over long distances and that extra resources and staff can overcome the problems associated with large electoral districts. Minority groups should be compensated by general governmental policy not by the granting of additional voting power. Further, representation should reflect people not wealth.¹⁶⁰

¹⁵⁶ *ibid*, p. 333.

¹⁵⁷ Gregor J F *et al*, *Commission on Government Discussion Paper*, p.10.

¹⁵⁸ Green A, *A Peculiar Electoral System*, ABC Online, April 10 2001.

¹⁵⁹ Gregor JF *et al*, *Commission on Government Discussion Paper*, p. 11.

¹⁶⁰ *ibid*.

- 7.15 COG reported that it could see no justification for the electoral system to be weighted on a geographical basis because proportionality will ensure that a diversity of views are represented in the Legislative Council.¹⁶¹

Other Upper Houses in Australia

- 7.16 Upper Houses come in many varieties and no one may be said to be typical.¹⁶² The wide diversity which exists among Parliaments throughout Australia and the world make it difficult to make comparisons, in fact, in many cases it would be misleading to do so. Local variations in history, powers and practices also makes comparison difficult.

- 7.17 In relation to vote weighting, the practice is not confined to the Western Australian electoral system. The Australian Constitution, by giving each state an equal number of Senators, provides electors in the less populated states with a substantially weighted vote. It is important to note, however, that different considerations apply to the Senate.¹⁶³

- 7.18 The electoral systems of the Upper Houses in Australia are outlined below:

7.18.1 The Senate in the Federal Parliament consists of 76 Members, 12 from each State, two from each Territory. The Members are elected under a system of proportional representation using the single transferable vote, full preferential, above the line voting method. Members serve a six year term, of which half retire every three years. Each State and Territory serves as a multi Member constituency.

7.18.2 The NSW Legislative Council consists of 42 Members elected on an optional preferential proportional representation basis from one electorate, the State of New South Wales. Members serve an eight year term, one half (21) being elected every four years to coincide with the term of Parliament. This means that a candidate requires approximately 4.5% of the total vote (after distribution of preferences) in order to secure a seat in the Upper House.¹⁶⁴

7.18.3 The Victorian Legislative Council consists of 44 Members elected under a preferential voting system. There are 22 Electoral Provinces, with two Councillors representing each Province. The Provinces are themselves

¹⁶¹ Gregor J F *et al*, *Commission on Government Report No. 1*, August 1995, Chapter 9, p. 342.

¹⁶² Loudy P, *Parliaments in the Modern World*.

¹⁶³ Griffith G, and Hrinivasan S, *State Upper Houses in Australia*, Background Paper No 1/2001, NSW Parliamentary Library Research Service, p. 3.

¹⁶⁴ *ibid*, p. 82.

divided into four electoral Districts. Members serve a term of between six and eight years, that is, two terms of the Legislative Assembly.¹⁶⁵

- 7.18.4 In Queensland the Legislative Council was abolished in 1922. The Legislative Assembly consists of 89 Members elected under an optional preferential voting system. All electorates have equal enrolment within a 10 percent tolerance except for five geographically large electorates with a land area of 100,000 square kilometres or more.
- 7.18.5 In South Australia the Legislative Council consists of 22 Members elected under a system of proportional representation with full preferential voting. There is no threshold. Members terms are for eight years and half are elected each four years. The lagged election cycle means that a party needs to win six Council seats at two consecutive elections in order to have control of the House. In practice this has been impossible for parties to attain. The State comprises one electorate.¹⁶⁶
- 7.18.6 The Tasmanian Legislative Council consists of 15 Members elected under a preferential voting system, from 15 single Member divisions or electorates. Members have a fixed six year term and elections for either two or three seats are always held each year on the first Sunday in May.¹⁶⁷ An equal number of electors is required in each region within a 10 percent tolerance based on a future projection of enrolments.

MODELS

- 7.19 A number of models for the Legislative Council were canvassed during the inquiry. These and some others are examined. These are:
- 7.19.1 Status Quo or Current Model: six Regions with either five or seven Members, proportional voting.
- 7.19.2 Proportional Voting with Equal Voter Representation Model.
- 7.19.3 Single Region Model: 34 Members, proportional voting.
- 7.19.4 The Greens (WA) Model: six regions with six Members, proportional voting.

¹⁶⁵ *ibid*, p. 51.

¹⁶⁶ *ibid*, p. 30.

¹⁶⁷ *ibid*, p. 38.

- 7.19.5 Provincial Model: 17 regions of two Members, preferential voting, staggered elections.
- 7.19.6 Part Provincial Part Direct Election model: part proportional, preferential in non metropolitan.
- 7.19.7 Abolition and Incorporation Model: abolish Legislative Council and incorporate seats into the Legislative Assembly.

Status Quo Model

- 7.20 The current structure of the Legislative Council has been discussed earlier in the report at paragraph 7.7.
- 7.21 The three metropolitan regions have the same number of elected representatives in total as the three rural regions. As the metropolitan regions have over twice the population of the rural regions, this system gives the rural regions a higher number of Members in the Legislative Council per head of population.
- 7.22 The differing electoral systems for the two Houses of Parliament may result in differences between the political composition of the two Houses. Historically, the Legislative Council has tended to be controlled by the coalition of the Liberal and National parties. However, partly as a result of the changes to the electoral system in 1987, the “balance of power” in the Legislative Council has been held by either minor parties or independent Members since May 22 1997, although it could be argued that the conservative parties lost control of the Legislative Council from July 10 1991 when Hon Reg Davies MLC resigned from the Liberal Party and became an independent.
- 7.23 The Electoral Amendment Bill 2001 proposes retention of this model.
- 7.24 Hon Paddy Embry MLC supports this model.

Proportional Voting with Equal Voter Representation Model

- 7.25 The Labor Party supports the application of the principle of voter parity in both Houses in the Western Australian Parliament.

“In the legislative council 74% of electors in the metropolitan district elected 17 members or 50% of the total representation in the upper house. Non-metropolitan Western Australian electors elected the remaining 17 members. Put simply, 26% of non-metropolitan electors

were able to elect 50% of parliamentary representatives in the legislative council.

*The Labor Party submits that whatever way parliamentary representation is examined in Western Australia, it is absolutely clear that equality of votes, which is the hallmark of democratic government, is absent. The Labor Party proposes that every Western Australian elector should be treated equally and that the state Parliament should embrace electoral equality.*¹⁶⁸

7.26 In its submission the Labor Party noted:

“... that there are difficulties experienced by members of Parliament serving large and remote electorates. However, these difficulties are better addressed, especially given technological advances, by providing additional resources such as staff, extra electorate offices, travel and communication facilities rather than maintaining an unfair and undemocratic electoral system.

*It is inappropriate, absurd and wrong in principle to address the issue of effective representation by the undemocratic means of electoral malapportionment. The fundamental principle of equality of representation should not be undermined by remoteness, history and assertions of a lack of administrative support, access or communications.*¹⁶⁹

7.27 The Liberal Party, although it prefers the Provincial Model, considers that by retaining rural vote weighting, the status quo is preferable to what the Labor Party submission suggests.

The Single Region (Statewide) Model

7.28 A single region model comprises one electoral district only encompassing the entire State, elected on a proportional system.

7.29 The Committee does not support this model.

¹⁶⁸ Submission of the Western Australian Branch of the Australian Labor Party, undated, p. 6.

¹⁶⁹ *ibid.*

The Greens (WA) Model

- 7.30 The Greens (WA) model comprises the retention of six regions but with a fixed six Members per region. Each region will retain six Members regardless of changes in population. The regions will ideally reflect bioregions, land use practices and community of interest.
- 7.31 The model requires an increase of two Members to 36 Members in the Legislative Council and will impose a burden on the revenue of the State.

Rationale

- 7.32 While a number of submissions provided significant arguments in support of the principle of vote equality, there was also significant concern expressed in regional Western Australia regarding the introduction of one vote one value.
- 7.33 There is, therefore, a need to moderate a quantitative system of voter equity in order to protect communities outside the metropolitan area from excessive centralisation of State government powers.
- 7.34 It should be noted that in many political systems across the world, including the Australian Federal Parliament, the regional voice is protected through the upper house of a bicameral system. These systems include the German Bundesrat and United States Senate. In Western Australia, the Legislative Council's structure can provide the opportunity for protecting the regional representation whilst allowing electoral reform to be enacted for the Legislative Assembly.
- 7.35 This provides that both Houses are elected in a different manner, and does not simply reflect the same vote twice. The Legislative Council has as its fundamental principle a different reason for existence to the Legislative Assembly in so far as both are part of the parliamentary structure of Western Australia and should thus take a different form.
- 7.36 The Committee heard from a number of witnesses supporting the six region six Member Legislative Council to provide representation in a similar manner to the Senate.
- 7.37 As Mr Rodney Botica at the hearing in Kalgoorlie stated:

“...and the senate is the house of review. I believe we should have a similar model in Western Australia and the legislative council, as the house of review, should run along the similar principles. It could have six bio-regions each represented by six members...the six by six

*model would not increase the malaportionment in the legislative council*¹⁷⁰

- 7.38 As Mr Kevin Richards, President of the Shire of Roebourne, stated at the hearing in Karratha:

*“My second choice would be to make the upper House like the Senate with completely equal representation. If there is one thing I like about this - if there is anything I do like - it is increasing the seats in the Mining and Pastoral Region from five to six. All the regions of Australia should be modelled on the Senate model, in which 12 people represent each State...”*¹⁷¹

- 7.39 As Mr Colin James stated in his submission:

*“I also support the six region, six member model for the legislative council. I believe that the legislative council should be based on the principle of regional representation in the same way as the senate represents the states. That would protect the communities of interest and particular perspectives of each region and ultimately it would be in the best interests of Western Australia.”*¹⁷²

- 7.40 The current structure of the Legislative Council provides equal numbers to city and country regions of seventeen each, although the six regions do not have equal representation. This system of regional representation has adequately represented regions, and provides a balance between wealth and agricultural production and individual franchise.

- 7.41 The regions as they currently exist are based on a set of criteria with a primary concern being community of interest. Community of interest includes general land-use practices. Community of interest was a principal concern for many submissions to the Committee. Community of interest should therefore remain the primary determinant in redistributions, and serve as the basis for any systems of qualitative regions.

- 7.42 However, a clearer definition of what constitutes a region needs to be placed within the legislative framework, such that regions are defined as generally reflecting the recognised communities of interest and land use patterns in the State, notwithstanding

¹⁷⁰ Transcript of evidence of Mr Rodney Botica, October 21 2001, p. 1.

¹⁷¹ Transcript of evidence of Cr Kevin Richards, Shire President, Shire of Roebourne, October 21 2001.

¹⁷² Submission of Mr Colin James, dated October 19 2001.

that the metropolitan area of Perth should remain as defined by the *Metropolitan Region Town Planning Scheme Act 1959*, and including Rottneest Island.

- 7.43 The principle of representing qualitative regions regardless of their population numbers would be better served by equalising the representation across all regions. The simplest way to equalise the qualitative regions of the Upper House is to even out the current disparity between the North Metropolitan and South West Regions, with seven representatives each, and the five representing each of the other four regions.
- 7.44 Section 46 of the *Constitution Acts Amendment Act 1899* deals with the capacity of the Legislative Council to introduce money bills and accordingly prevents The Greens (WA) from introducing an amendment in the Legislative Council to implement its six Member, six region model. For this reason, The Greens (WA) propose to amend the Electoral Amendment Bill 2001 so as to reduce the number of representatives to be returned in the North Metropolitan and South West Regions from seven Members to six Members. It further proposes that on return of the Bill to the Legislative Assembly a message will accompany the Bill requesting that the Legislative Assembly consider an amendment to the Electoral Amendment Bill 2001 to increase the number of representatives to be returned in the South Metropolitan, East Metropolitan, Agricultural and Mining and Pastoral Regions from five Members to six Members.
- 7.45 The Labor Party argument against The Greens (WA) model is still that of malapportionment. However pragmatic political considerations concluded that a substantive move to equal suffrage in the Legislative Assembly is sufficient motivation to accept the six region six Member model given that it will not impact on the will of the people in electing government.
- 7.46 The Liberal Party and One Nation Party do not support The Greens (WA) Model in its present form because of the decreased representation in some regional areas.

Provincial Model

- 7.47 The Liberal Party's position has always been that it prefers the provincial model whereby Legislative Council Members are elected on a staggered basis and that there are two Members for each of the seventeen provinces.
- 7.48 The changes proposed to the Legislative Assembly mean that the preferred model is even more important than before. Not only do the Members operate over an area that is impossible to service,¹⁷³ but also with a reduction in the Legislative Assembly country Members it becomes all the more important to have a local Member who is actually localised. Hon Mark Nevill suggested a revised provincial system, but the

¹⁷³ Transcript of evidence of Hon Mark Nevill, October 29 2001.

numbers would not work out without a significant increase in Membership of the Legislative Council. The Shire of Ngaanyatjarraku suggested abolishing the Legislative Council altogether because of the negative impact on the Shire of Ngaanyatjarraku but the arguments would also support a provincial system and would not support The Greens (WA) model:

“The original goal of vote weighting in the Upper House (encoded in property/wealth qualifications) the protection of position, wealth and maintenance of established order has, with the passage of time, become indefensible and would not be accepted as a valid basis for sectional advantage in this era.

There has been a social and political evolution in the operation of the Upper House to provide opportunities for franchise of a wider sectional interests within the community.

...

We have therefore, “good” vote weighting and “bad” vote weighting.

These sectional interests would be unlikely to gain Lower House representation, which have to be won on the basis of winning unweighted head to head contests as opposed to winning quotas.

In this sense, the Upper House is still the home of sectional interest, although the sectional interest is no longer the conservative interest which prevailed for 100 years.

...

There is no justification in modifying the Legislative Council to validate accommodating a new range of sectional interests.

As a Local Government serving electors living in remote Aboriginal Communities in regional Western Australia, we consider that the marginal franchise of electors in this area will be further eroded by the proposed legislation. (The Shire of Ngaanyatjarraku has been redistributed from the Legislative Assembly seats of Eyre, Northern Rivers and the Pilbara in recent history, without regard to community of interest, geography, resources or access)

*Abolition of the Legislative Council and an increase in the size of the Legislative Assembly is the pathway to genuine, credible electoral reform.*¹⁷⁴

- 7.49 One of the objections to the staggered election system is that Council Members would have an eight year term. The solution to this was offered by Hon Mark Nevill who suggested two yearly elections of half the Legislative Council with the mid term elections coinciding with Local Government elections.
- 7.50 Hon Paddy Embry MLC argues that this proposal is not truly democratic:
- 7.50.1 It would almost certainly exclude the minority parties such as One Nation or independents because the percentage vote in order to be elected would in fact be doubled.
- 7.50.2 As an example, in the South West 25% would be required rather than the current 12.5%.
- 7.50.3 Many thousands of people would not be represented if this idea were to be adopted.

Part Provincial Part Direct Election Model

- 7.51 Assuming that the Liberal Party's preferred position on provinces may not be acceptable to the majority of the Committee then the Liberal Party Members propose an alternative whereby the non metropolitan regions revert to preferential rather than proportional election. Thus the Mining and Pastoral Region and the Agricultural Region would each be divided into five single Member electorates and the South West would be divided into seven single Member electorates with Members being elected for a fixed four year term. The metropolitan regions would keep their current proportional method of election.
- 7.52 This in part addresses the removal of local representation from remote areas. Although some people may favour the proportional representation system, combined with equal voter numbers it leads to a lack of adequate representation in these areas.

Abolition and Incorporation Model

- 7.53 Two submissions – one oral and one written – supported the abolition of the Legislative Council in order to transfer a similar number of Members into the Legislative Assembly so as to ensure proper country representation.

¹⁷⁴ Submission of the Shire of Ngaanyatjarraku, dated October 22, 2001, pp. 1-2.

- 7.54 The support of Mr Max Trenorden MLA was a fallback position upon the removal of rural vote weighting.

“I will be now be an advocate of abolishing the upper House, because it is impossible for the upper House to make a difference in health, education or any of those matters that matter to country people. If there must be 93 members of Parliament, I would much prefer them all to be in the Lower House. Even if the numbers were against a member, at least the district he represents will not be enormous. It would be a reasonably confined area. If the population of Western Australia were divided by 93, the constituencies would not be large. A member in a smaller constituency would at least have the chance to fully represent the people. That is a new-found position.”¹⁷⁵”

- 7.55 The Shire of Ngaanyatjarraku’s position was unconditional. This may have been because they saw the abolition as a fait accompli – a view taken by a number of witnesses. A significant quote from the submission of Mr Damian McLean, Shire President, is at paragraph 7.48. The Shire of Ngaanyatjarraku was concerned at the diminution of their local representation in absolute terms and saw this as a possible remedy.
- 7.56 The Committee does not support this proposition although the Liberal Party have proposed a variation based on the underlying arguments.

EFFECT OF THE BILL ON REGIONAL REPRESENTATION IN THE LEGISLATIVE COUNCIL

- 7.57 As stated above, the current system in the Legislative Council comprising Members representing regions within the State, gives some guarantee that certain regions, particularly those that are remote from the metropolitan area, will always have some representation in the Western Australian Parliament, regardless of population.
- 7.58 Whilst the status quo will be broadly preserved in the Legislative Council, of major concern to many is the effect that the change to the distribution of seats for the Legislative Assembly will have on regional representation in Western Australia. The majority of submissions received from people in regional Western Australia vehemently oppose the legislation on the grounds that their parliamentary representation will be reduced.
- 7.59 Regional Western Australia’s economic and social situation is currently strained and the fear is that reduced representation may result in a worsening of this situation. Shires and local councils of regional Western Australia who made submissions to the

¹⁷⁵ Transcript of evidence of Mr Max Trenorden MLA, Member for Avon, October 21 2001, p. 4.

Committee stated that their major concern is that the increase in the number of politicians in the metropolitan area will mean that all decisions regarding the allocation of government services will be dominated by the metropolitan region, at the expense of the country.¹⁷⁶

7.60 As the PGA submission stated:

*“This is not a time to worsen the plight of the regions, by removing their representation in Parliament.”*¹⁷⁷

7.61 As Cr Barbara Marshall, Shire of Denmark stated, at the hearing in Mount Barker:

*“As a shire council we do not want to get embroiled in the politics side of it, but we are very concerned that with more power going to the city it will lessen the shire’s opportunity to have funding and money come its way, because it is our perceived opinion at the moment that when people are running for elections they promise funding and money to the country areas in the hope of getting votes, yet that promised money to our area is very lacking, and that is a real concern to our shire council.”*¹⁷⁸

7.62 As Mr Fraser, CEO of the Shire of Coolgardie stated, at the hearing in Kalgoorlie:

*“The gap between services in metropolitan area and the limited services available in regional, rural and remote areas is already significant, and any dilution of parliamentary representation will only increase this ever-widening gap.”*¹⁷⁹

7.63 As Mr Strange stated in an exchange with Hon Peter Foss MLC at the hearing in Bruce Rock:

“Mr Strange: ... Bruce Rock should join the twenty-first century next year and be connected to the mobile telephone service. Council had to contribute \$80 000. In 1994, the principal of the Bruce Rock District High School wanted an extra classroom. The Education Department was not forthcoming, so the local community raised the money to build one with the help of the council. In 1995, the

¹⁷⁶ See, for example, the submission from Mr Brett Nazzari, dated October 18 2001.

¹⁷⁷ Submission of the Pastoralists and Graziers Association, dated November 7 2001, p. 3.

¹⁷⁸ Transcript of evidence of Cr Barbara Marshall, Shire of Denmark, November 5 2001, p. 1.

¹⁷⁹ Transcript of evidence of Mr Jim Fraser, Chief Executive Officer, Shire of Coolgardie, October 21 2001, p. 1.

Education Department wanted all preprimary facilities located on the school grounds, but were only prepared to provide a transportable donga-type building. The local community raised the funds to build a high quality purpose-built facility. The perception that we have been advantaged by the current electoral system in the bush astounds me. The basic services such as roads, health, emergency services, education and telecommunications, which are expected or just happen in highly populated areas, have to be fought for in the bush and, if they are still not forthcoming, the locals pay. We feel that we are already disadvantaged by living in the country. Any further reduction in political representation can only lead to a further weakening of our position.

Hon PETER FOSS: *It is like the old American independence cry, "No taxation without representation". You are saying that the country is paying all the taxation, but it does not get the representation to ensure that the money comes back to the country.*¹⁸⁰

- 7.64 Under the proposed legislation Legislative Assembly electoral districts will be determined by the number of voters in them. It was submitted to the Committee that the effect of this is that equality of representation for rural and remote areas will be decreased.¹⁸¹ The residents of regional Western Australia believe that they should be entitled to as much access to their elected representatives as would electors in a metropolitan electorate.

"The proposed legislative changes will only compound the difficulties being faced in regional WA. Country and rural regions simply cannot and will not receive adequate representation in the future if the proposed changes are successful. Equality of votes will not achieve equality of representation between non-metropolitan and metropolitan residents of the State, which is where the real disparity currently exists. Simple mathematics shows that the regions will miss out in the future. Table 1 of my submission shows that the current Legislative Assembly representation for the non-metropolitan region is 23 members, covering a total area of 2 551 714 square kilometres. By contrast, 34 members, covering a total area of just 5 416 square kilometres, represent the interests of metropolitan electors. Under the proposed legislative changes, these numbers will change to 15

¹⁸⁰ Transcript of evidence of Cr Stephen Strange, President, Shire of Bruce Rock, October 22 2001, p. 2.

¹⁸¹ Submission of the Town of Port Hedland, dated October 18 2001.

members representing non-metropolitan areas and 42 members representing the interests of the metropolitan area. The ratio of city to country seats will therefore increase from 1.5 to 2.8, meaning that the metropolitan area will have nearly three times the parliamentary representation of the country. It stands to reason that when there is money to be spent, it will be spent where the votes are, and the votes will be in the metropolitan area."¹⁸²

- 7.65 It is argued that even with the current system of vote weighting in Western Australia effective representation for the constituents that each Member jointly represents is reduced due to the geographically large regions that exist. Hon Mark Nevill, former Member of the Legislative Council, told the Committee, at the hearing in Fitzroy Crossing, of the difficulty in servicing the Mining and Pastoral Region. He informed the Committee that due to the size of the electorate remote areas are neglected:

*"If you look at those areas that are remote, they are rarely visited by politicians. ... The massive electorates are not necessarily serviced by members."*¹⁸³

"I worked very hard to try to represent the federal seat of Kalgoorlie, even as a Labor Party member. We never had a sharing of the workload. People said that Tom Stephens looked after the Kimberley, Tom Helm looked after the Pilbara and I looked after the goldfields.

*... Members do not represent that whole area. Try as much as I could, and I enjoy visiting communities in the desert areas, I could never really properly represent the Pilbara area. I did a reasonably good job of the Kimberley, and a good job of the goldfields and Murchison areas, but a pretty miserable job of the Gascoyne and a pathetic job of the Pilbara. It was too much work getting around"*¹⁸⁴

- 7.66 The added pressure on Members of the Legislative Council to represent country interests, with a reduction in the number of electoral districts in the Mining and Pastoral, South West and Agricultural Regions, will do nothing to improve the effectiveness of representation for the constituents.

"With the adoption of the proposal, country representation would decrease, resulting in increased geographic size of country districts,

¹⁸² Transcript of evidence of Cr Kevin Richards, Shire President, Shire of Roebourne, October 31 2001, p. 4.

¹⁸³ Transcript evidence of Hon Mark Nevill, October 29 2001, p. 4.

¹⁸⁴ *ibid.*, p. 5.

creating difficulties for country members to service their electorates."¹⁸⁵

7.67 The Town of Port Hedland submitted that:

*"This will make representation of the region even more difficult as delivery of service by country Members to their constituents would be much harder."*¹⁸⁶

7.68 Hon Mark Nevill, at the hearing in Fitzroy Crossing, informed the Committee that:

*"It was too much work getting around. You really need to have a smaller seat in the Mining and Pastoral Region to be able to focus yourselves on the issues. It is too big as it is. A member of Parliament does two things: the work you do in Parliament on parliamentary committees with legislation and the other one is getting around the electorate. Your electorate officer cannot substitute for your doing that. If the electorate is too big, you cannot do it yourself."*¹⁸⁷

7.69 It can be assumed therefore, that the pressure upon those Members of the Legislative Council representing regional Western Australia will be heightened as the people of the non metropolitan regions will be placing greater reliance on them as an effective voice in the Parliament. The Committee received many submissions on the distances required for a Member to travel and relating to the impact of the physical size, diversity and specific needs of rural/remote electorates as a basis for achieving effective representation.

7.70 It is acknowledged that problems in representation are not just confined to regional areas. For example, it was recognised by some¹⁸⁸ that Members of the electoral districts and regions located in more urban-based areas of Western Australia are required to represent substantially larger populations and therefore must confront particular issues which otherwise do not arise in respect to rural/remote areas. However, many believe that the metropolitan electoral districts and regions are substantially assisted in addressing the issues and needs of electors through the provision of a greater number of Members where appropriate and more ready access to effective representation services, relative to those afforded to rural/remote electoral

¹⁸⁵ Submission of the Shire of Plantagenet, dated November 2 2001.

¹⁸⁶ Transcript of evidence of Mr Tony Ford, Chief Executive Officer, Town of Port Hedland, October 18 2001.

¹⁸⁷ Transcript evidence of Hon Mark Nevill, October 29 2001, p. 5.

¹⁸⁸ CSCA submission.

districts and regions.¹⁸⁹ Members of rural/remote regions are generally required to direct considerable effort and resources across a broader constituency base in order to achieve effective representation outcomes. Often, as is the case with the larger electoral regions, this translates to aspects such as extensive road and air travel and the need for operation of offices in various locations. Such extensive travel is likely to become more common as a result of the proposed changes to the electoral system contained in the Bills.

7.71 As Hon Mark Nevill stated in an exchange with Hon Peter Foss MLC, at the hearing in Fitzroy Crossing:

“Hon PETER FOSS: You are saying that at least in the Mining and Pastoral Region, no member can represent the whole region; all the member can do is represent, you think, two-thirds of it.

Mr Nevill: I think it is beyond any member to properly represent all of that region and actually get around the whole area. It is very difficult, because of the other demands on a member’s time. Only the member can get out and about and do that sort of thing.

Hon PETER FOSS: Do you have any observations about metropolitan regions?

Mr Nevill: In respect of the upper House?

Hon PETER FOSS: The capacity to represent 250 000 or 300 000 people.

Mr Nevill: It is a lot easier, because there is not the distance to travel. The metropolitan upper House members whom I know - I am talking about just the run-of-the mill party members - do not get the number of constituent inquiries that country members often get. The workload of some of the members whom I have come to know fairly intimately over the years might vary. The Greens obviously have people from all over the State and one member; it is a lot different for a member of a big party in a metropolitan area.”¹⁹⁰

¹⁸⁹ *ibid.*

¹⁹⁰ Transcript evidence of Hon Mark Nevill, October 29 2001, p. 8.

EXTRA REPRESENTATION IN THE LEGISLATIVE COUNCIL?**Views expressed to the Committee**

7.72 With the Legislative Assembly becoming subject to the principle of one vote one value on the passing of the Bills, an argument that has been put forward is that the Legislative Council should be so configured as to represent a wider range of interests, in order to compensate for the narrowing of representation of interest in the Legislative Assembly. Thus, to the extent that rural interests are devalued in the present legislation before Parliament, it may be possible to enhance their representation in the Upper House.¹⁹¹

7.73 A way this can be achieved is to increase the number of Members in the Legislative Council. Hon Mark Nevill, at the hearing in Fitzroy Crossing, suggested increasing the numbers in the Legislative Council by two Members:

*“I recommend that the Legislative Council be increased by two members to 36. That would give two Legislative Council members to every three Legislative Assembly members. I also recommend that a Legislative Council electorate be three lower House or Legislative Assembly electorates, and that you have two members of the Legislative Council for three of those lower House electorates. That is manageable for a Legislative Council member ...”*¹⁹²

7.74 Mr Greg Boland, Solicitor, at the hearing in Perth made a similar suggestion:

“I suggest a minor change to the six region, 34 member upper House. The number of parliamentarians should be increased by two. There is no reason to not have an expanded upper House. It could have seven regions, each with seven members. It has been suggested there could be community resistance to an increase in the number of members of Parliament. I propose a modest increase of two members. If there were resistance to that, the Legislative Assembly could reduce its number by two members. There would still be the same overall number of parliamentarians. An additional two members will not lead to significant expense. It would represent only a slight increase in the overall cost of running the Parliament. It has been some time since the size of the Parliament was increased. The population of Western Australia has increased significantly since the last increase.

¹⁹¹ Submission of Professor G.J. Craven, Dean of the University of Notre Dame Australia Law School, dated October 17 2001.

¹⁹² Transcript evidence of Hon Mark Nevill, October 29 2001, p. 5.

*The Commission on Government suggested that there be an increase in the number of parliamentarians.*¹⁹³

FINDINGS

Minority Finding

7.75 A minority (Hon Giz Watson MLC) of the Committee is of the view that a regional system comprising six regions of six Members is the most desirable system for the Legislative Council.

RECOMMENDATIONS

Recommendations of the Committee - Unanimous

Recommendation 7: The Committee recommends retaining the current balance between regions based on the metropolitan areas and non metropolitan areas in the Legislative Council.

Recommendations of the Committee - Majority

Recommendation 8: The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina, Giz Watson and Paddy Embry MLCs) recommends that the multi-Member region based system of representation as currently exists in the Legislative Council continue.

Recommendation 9: The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) recommends that The Greens (WA) Model for the Legislative Council be adopted.

Recommendations of a Minority

Recommendation E: A minority of the Committee (Hon Giz Watson MLC) recommends that the principle of regional representation be enshrined by a statement within the legislation, and that due consideration be given to the inclusion of a statement of principle within the State Constitution.

¹⁹³ Transcript of evidence of Mr Greg Boland, November 7 2001, p. 2.

Recommendation F: A minority of the Committee (Hons Peter Foss and George Cash MLCs) recommends that the Legislative Council return to a system of direct election of Members from 17 two Member electorates with a staggered fixed term. The term should be four years with alternate elections taking place in conjunction with local government elections.

Recommendation G: A minority of the Committee (Hons Peter Foss and George Cash MLCs) recommends that failing the adoption of Recommendation F, the Legislative Council be elected upon the current boundaries, but that the Mining and Pastoral, Agricultural and South West Regions be divided into five, five and seven single Member provinces respectively so that those parts of Western Australia which have been deprived of meaningful representation, in some measure have that representation returned to them. The Metropolitan Regions will be elected on the same basis as currently.

Recommendation H: A minority of the Committee (Hon Paddy Embry MLC) recommends that the status quo or current model for the Legislative Council be maintained.

CHAPTER 8

THE MANNER AND FORM REQUIREMENTS FOR THE REPEAL OF THE *ELECTORAL DISTRIBUTION ACT 1947*

- 8.1 As stated earlier in the report, clause 3 of the Electoral Distribution Repeal Bill 2001 proposes to repeal the *Electoral Distribution Act 1947*.
- 8.2 Section 13 of the *Electoral Distribution Act 1947* imposes a technical, or “manner and form”, requirement that must be satisfied before the *Electoral Distribution Act 1947* may be amended. Section 13 provides as follows:

“13. Amendments to be passed by absolute majorities of members of Council and Assembly

It shall not be lawful to present to the Governor for Her Majesty's assent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.”

- 8.3 An absolute majority of the Members presently in the Legislative Assembly is 29 Members (that is, a majority of 57 Members).
- 8.4 An absolute majority of the Members presently in the Legislative Council is 18 Members (that is, a majority of 34 Members).

OBSERVANCE OF MANNER AND FORM REQUIREMENTS

- 8.5 A question has arisen as to the lawful capacity and ability of an Australian Parliament, and in particular the Parliament of Western Australia, to impose upon itself legislative procedures prescribing the manner and form in which it may enact, amend or repeal legislation and the effect on legislation where the Parliament fails to have regard for and follow proper procedural requirements to give lawful effect to legitimate manner and form provisions in legislation.
- 8.6 Manner and form provisions refer to those special provisions that entrench procedural requirements that are binding on the Parliament and which require the Parliament to recognise and observe a fetter on its legislative capacity or power and require Parliament to adopt a legislative procedure consistent with the manner and form

requirements expressly provided for by a particular Act or where a legislative procedure is caught by a law respecting the constitution, powers or procedures of the Parliament.

- 8.7 These restrictive procedures prevent a Parliament from validly amending, varying or repealing legislation unless the manner and form requirement is complied with. Manner and form provisions are included in legislation where the Parliament considers that any amendment, variation or repeal of legislation is a matter which is of such significant importance or so fundamental to the State that to avoid manipulation or other undesirable practices it should be the subject of special procedural provisions which, if not satisfied by the Parliament, would render such amendment, variation or repeal, *void ab initio* for failing to achieve the special procedural requirement imposed by statute.
- 8.8 The manner and form which may be prescribed for the enactment of legislation is not confined to questions of parliamentary procedure, but relates to the entire process of turning a proposed law or bill into an act.
- 8.9 Legislation that provides for an absolute majority vote in the Legislative Council and Legislative Assembly will be regarded by the Courts as a legitimate manner and form requirement.

THE NATURE OF “ENTRENCHMENT” PROVISIONS

- 8.10 In his book *Constitutional Law in Australia*,¹⁹⁴ Peter Hanks states that for the most part the various state Acts that set up constitutional structures are subject to amendment or repeal by the relevant state Parliament in the same way as any other legislation (*McCawley v The King* [1920] AC 691 at 704).¹⁹⁵ However, Peter Hanks goes on to explain that certain aspects of these constitutional structures within the states are “entrenched” so that a particular legislative procedure must be followed to amend or repeal the provisions dealing with those aspects.¹⁹⁶

Single v Double Entrenchment

- 8.11 Manner and form provisions may be achieved by either single or double entrenchment.

¹⁹⁴ Hanks P, *Constitutional Law in Australia*, 2nd Edition, Butterworths: Sydney, 1996.

¹⁹⁵ *ibid*, p. 30.

¹⁹⁶ *ibid*, p. 30.

- 8.12 Single entrenchment allows an amendment, variation or repeal of legislation, including the particular manner and form provision, with a simple majority and is accordingly of limited value.
- 8.13 Double entrenchment applies to the method of amending, varying or repealing legislation, including the manner and form provision itself in an Act, and the manner and form in which current or future laws are to be amended, varied or repealed.
- 8.14 An example of double entrenchment is to be found in s13 of the *Electoral Distribution Act 1947*. Section 13 attaches to amendments to any of its provisions dealing with its subject matter and proposals to amend or repeal s13 itself.
- 8.15 Another double entrenched manner and form provision in legislation in Western Australia is s73 of the *Constitution Act 1889*. Section 73(1) requires an absolute majority on the second and third readings of any Bill by which any change in the constitution of the Legislative Council or Legislative Assembly shall be effected. Section 73(2) in addition requires certain matters to be submitted to a referendum of electors before a Bill is given Royal Assent.
- 8.16 The phrase “manner and form” derives from the wording of s5 of the *Colonial Laws Validity Act (Imp) 1865* which is described in the long title as “*an Act to remove doubts as to the validity of Colonial Laws*” and which was assented to on June 29 1865. Section 5 provides:

“5. *Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.*”

- 8.17 The key words in s5 are –

“*...to make laws respecting the constitution powers and procedures....*”

...in such manner and form as may from time to time be required...”

- 8.18 The authority to legislate so as to require a particular manner and form procedure is derived from the general legislative grant of power conferred on the State by the *Constitution Act 1889*, described in the long title as “*an Act to confer a Constitution on Western Australia and grant a Civil List to Her Majesty*”, and in particular s2 of the 1889 Act and s6 of the *Australia Act 1986* which provided continuity to the provisions of s5 of the *Colonial Laws Validity Act 1865* when it was repealed by the *Australia Act 1986*. Section 2 of the *Constitution Act 1889* provides:

“2 (1) There shall be, in place of the Legislative Council now subsisting, a Legislative Council and a Legislative Assembly: and it shall be lawful for Her Majesty, by and with the advice and consent of the said Council and Assembly, to make laws for the peace, order, and good Government of the Colony of Western Australia and its Dependencies; and such Council and Assembly shall, subject to the provisions of this Act, have all the powers and functions of the now subsisting Legislative Council.

The Parliament of Western Australia consists of the Queen and the Legislative Council and the Legislative Assembly.

Every Bill, after its passage through the Legislative Council and the Legislative Assembly, shall, subject to section 73 of this Act, be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.”

- 8.19 Section 1 of the *Australia Act 1986* expressly terminates the power of the Parliament of the United Kingdom to make laws having effect as part of Australian law, whether as a law of the Commonwealth, of a State or of a Territory.
- 8.20 Section 2 of the *Australia Act 1986* sets out the legislative power of the Australian State Parliaments:

“Legislative powers of Parliaments of States

2. (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised

before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.”

- 8.21 Section 3 of the *Australia Act 1986* removes the requirement that legislation of Australian State Parliaments must not be repugnant to the laws of the United Kingdom:

“Termination of restrictions on legislative powers of Parliaments of States

3. (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.”

- 8.22 Section 6 of the *Australia Act 1986* provides:

“6. Notwithstanding sections 2 and 3 (2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.”

- 8.23 The key words in s6 are :

8.23.1 “ ... respecting the constitution, powers or procedure of the Parliament ...”

8.23.2 “ ... unless it is made in such manner and form ...”

- 8.24 The effect of s6 was to carry forward the provisions which were previously part of s5 of the *Colonial Laws Validity Act 1865* and provide for continuation of the mandatory

- requirement for the Western Australian Parliament and other Australian Parliaments to observe the manner and form procedure requiring any amendment, variation or repeal of a law respecting the constitution, powers or procedure of the Parliament.
- 8.25 A law respecting the constitution, powers or procedure of the Parliament can be divided into a number of specific elements.
- 8.26 A law respecting the constitution of a Parliament will deal with Parliament's nature and composition; a law respecting the powers of a Parliament will deal with Parliament's own legislative capacity and authority.
- 8.27 A law respecting the procedure of a Parliament will deal with the particular rules and requirement for the passage of valid legislation such as a need for a Bill to be passed by an absolute majority of the whole numbers of the Legislative Council and Legislative Assembly at the second and third reading stage before the Bill can be lawfully presented to the Governor for Her Majesty's assent.
- 8.28 Section 6 of the *Electoral Distribution Act 1947* is a law affecting the constitution of the Parliament as it deals with the mode of appointing the Parliament in the following terms:
- "6. (1) *The Commissioners shall --*
- (a) *divide the Metropolitan Area into 34 districts; and*
- (b) *divide the area comprising the remainder of the State into 23 districts.*
- (2) *The Commissioners shall make the division of an area mentioned in subsection (1) (a) or (b) into districts in accordance with the principle that the number of enrolled electors comprised in any district in the area must not be more than 15 - greater, or more than 15 - less, than the quotient obtained by dividing the total number of enrolled electors in the area by the number of districts into which the area is to be divided.*"
- 8.29 Any law purporting to repeal s6 of the *Electoral Distribution Act 1947* is clearly a law respecting the constitution of the Parliament and, to be valid, must be passed in accordance with the specified manner and form requirements.

8.30 In a 1989 article published in the Queensland University of Technology Law Journal,¹⁹⁷ Dr Gerard Carney (now Assoc Professor of Law at Bond University, Queensland) proposes five prerequisites as a convenient methodology by which to analyse, in any particular case, whether a provision does in law constitute a valid and effective binding manner and form provision – a provision which validly fetters or binds successor Parliaments.

8.30.1 The manner and form provisions can be contained in any Act of the State Parliament. Hence, the manner and form provision can be found in any Act, whether it deals with animals, water pollution or the constitutional power of the State. However, the legislation to which the manner and form is directed must be a law respecting the constitution, powers or procedure of the Parliament.¹⁹⁸

8.30.2 The manner and form provision binds only future laws respecting the constitution, powers or procedure of the Parliament. Unless the law is able to be characterised as a law respecting the constitution, power or procedure of the Parliament, no challenge can be made to the validity of that law under s6 for non compliance with a manner and form provision. Examples of laws which satisfy this characterisation test are:

- a) a law to abolish an Upper House, a law to add another chamber, or
- b) a law to expressly repeal a manner and form provision. A law which expressly repeals a valid manner and form provision is clearly a law respecting the powers and procedure of the Parliament.¹⁹⁹

8.30.3 Only mandatory manner and form requirements are binding. A law challenged under s6 is only invalid if it has failed to comply with one or more mandatory requirements of a manner and form provision. This is illustrated by the decision of the High Court in *Clayton v Heffron*,²⁰⁰ which concerned an attempt by Members of the Legislative Council of New South Wales to prevent a Bill to abolish that House being submitted to a referendum pursuant to s5B of the *Constitution Act 1902* (NSW).²⁰¹

8.30.4 Manner and form requirements must relate to the legislative process.

¹⁹⁷ Carney G, *Queensland University of Technology Law Journal*, 1989, pp. 69-95.

¹⁹⁸ *ibid*, p. 75.

¹⁹⁹ *ibid*, pp. 77-78.

²⁰⁰ (1960-61) 105 CLR 214.

²⁰¹ Carney G, *Queensland University of Technology Law Journal*, 1989, p. 79.

- 8.30.5 Manner and form requirements must not purport to abdicate legislative power. This requirement relates to the nature of the manner and form provision itself. A distinction must be drawn between a manner and form provision which regulates the procedure by which future legislation is enacted, that is the law making process, and a provision which purports to deprive Parliament of the power of law making.²⁰²
- 8.31 Professor Carney has also commented on other authorities which can be held to bind the Parliament to observe manner and form provisions that include:
- 8.31.1 Section 106 of the Commonwealth of Australia *Constitution Act 1901* which provides:
- “106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.”*
- 8.31.2 The principles as outlined by the Privy Council in *The Bribery Commissioner v Pedrick Ranasinghe*.²⁰³ The principles may be stated as:
- a) A legislature, whose powers are derived from a written instrument, does not have inherent power derived from the mere fact of its establishment to pass laws by resolution of a bare majority in disregard of a legal requirement that they be passed in a specified manner or form.
 - b) The Courts have jurisdiction to declare invalid a law passed in disregard of a valid manner and form requirement.
 - c) A legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law.
- 8.31.3 A Parliament may introduce manner and form requirements in legislation providing for a new element in legislative authority, which may consist of different elements dealing with different legislation, or Parliament may prescribe the specific elements in which certain powers are to reside.

²⁰² Carney G, *Queensland University of Technology Law Journal*, 1989, p. 82. See comments of King CJ in *West Lakes Limited v the State of South Australia* (1980) 25 SASR, at 397.

²⁰³ (1965) AC 172.

8.32 There has been much written on the need to observe manner and form provisions imposed by specific mandatory requirements in legislation respecting the constitution, powers or procedure of an Australian Parliament and also the effect on Parliaments of s5 of the *Colonial Laws Validity Act 1865* which is now found in s6 of the *Australia Act 1986*.

THE LEGISLATIVE COUNCIL'S MOTION REQUESTING THAT THE ATTORNEY GENERAL OBTAIN AN OPINION FROM THE JUSTICES OF THE SUPREME COURT OF WESTERN AUSTRALIA ON THE LEGALITY OF THE ELECTORAL DISTRIBUTION REPEAL BILL 2001

8.33 On Wednesday September 19 2001 the Legislative Council passed the following motion moved by Hon George Cash MLC:

“That the Leader of the House advise this House within 14 days or on the first sitting date thereafter if the House is not then sitting -

(a) *whether the Attorney General will commence proceedings seeking a declaration of law by the Full Court of the Supreme Court on the following questions -*

(i) *Is it lawful for the Clerk of the Parliaments to present to the Governor for Her Majesty's assent a bill to repeal the Electoral Distribution Act 1947 unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of Members for the time being of the Legislative Council and the Legislative Assembly respectively?*

(ii) *Is it lawful for the Clerk of the Parliaments to present to the Governor for Her Majesty's assent a bill which enacts an electoral distribution scheme which replaces or substitutes for the scheme in the Electoral Distribution Act 1947 following or in conjunction with repeal of the Electoral Distribution Act 1947 unless the second and third readings of such Bills shall have been passed with the concurrence of an absolute majority of the whole number of Members for the time being of the Legislative Council and the Legislative Assembly respectively?*

(b) *if the Attorney General will commence such proceedings, the date on which he will instigate the issuing of the originating*

*summons and the arrangements he will make for the adequate and proper argument of the questions.*²⁰⁴

- 8.34 On Tuesday October 23 2001 the Attorney General published his reply to the motion, in which he stated that he was not prepared to ask the Supreme Court of Western Australia to make a decision with respect to a hypothetical situation such as the validity of a Bill yet to be passed by the Parliament.²⁰⁵

THE PROCEDURE FOLLOWED BY THE WESTERN AUSTRALIAN PARLIAMENT FOR THE REPEAL OF PREVIOUS ELECTORAL DISTRIBUTION LEGISLATION

Repeal of the *Redistribution of Seats Act 1929* and the *Redistribution of Seats Act 1911*

- 8.35 The *Electoral Distribution Act 1947*, then known as the *Electoral Districts Act 1947*, was assented to on December 19 1947. Section 14 of the *Electoral Districts Act 1947* repealed, amongst other Acts, the *Redistribution of Seats Act 1929* and the *Redistribution of Seats Act 1911*.²⁰⁶

- 8.36 The *Redistribution of Seats Act 1929*, as the name suggests, was an “Act for the Redistribution of Seats at Parliamentary Elections”. Section 4 of the *Redistribution of Seats Act 1929* stated:

“4. It shall not be lawful to present to the Governor for his Majesty’s assent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.”

- 8.37 On December 4 1947, the Legislative Assembly passed the *Electoral Districts Act 1947* by a vote of 27 to 18. The Speaker of the Legislative Assembly stated at the time:

*“I declare the third reading of the Bill carried by an absolute majority.”*²⁰⁷

- 8.38 Subsequently, on December 10 1947, the President of the Legislative Council made the following comments on the third reading of the *Electoral Districts Bill 1947*:

²⁰⁴ Minutes of Proceedings No. 33, Wednesday September 19 2001, Legislative Council, p. 4.

²⁰⁵ “One vote, one value opinion bid rejected”, *The West Australian*, Wednesday, October 24 2001, p. 32.

²⁰⁶ *Electoral Districts Act 1947*, s. 14.

²⁰⁷ *Hansard*, Legislative Assembly, December 4 1947, p. 2523.

*“As this requires the concurrence of an absolute majority of members, it is necessary that the House should divide.”*²⁰⁸

Repeal of part of the *Redistribution of Seats Act 1911*

8.39 The *Redistribution of Seats Act 1929* itself repealed most of the *Redistribution of Seats Act 1911*.²⁰⁹

8.40 Section 3 of the *Redistribution of Seats Act 1929* states that:

“The ten Electoral Provinces shall be designated, as heretofore, by the names stated in section 6 of the Constitution Acts Amendment Act 1889, and the existing boundaries of such provinces at the date of the passing of this Act, as determined by the Redistribution of Seats Act 1911, shall, until otherwise determined by Parliament, continue and be unaffected by this Act, or the proclamation whereby it is brought into operation.”

8.41 Section 5 of the *Redistribution of Seats Act 1929* states that:

“Save as aforesaid, the Redistribution of Seats Act, 1911, is hereby repealed.”

8.42 The *Redistribution of Seats Act 1911* was also an “Act for the Redistribution of Seats at Parliamentary Elections”, and contained the following provision at s6:

“6. It shall not be lawful to present to the Governor for His Majesty’s assent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.”

8.43 On April 3 1929, at the third reading of the Redistribution of Seats Bill 1929 in the Legislative Assembly, the Speaker stated:

“An absolute majority is required for the passage of the third reading.

...

²⁰⁸ Hansard, Legislative Council, December 10 1947, p. 2606.

²⁰⁹ *Redistribution of Seats Act 1929*, s. 5.

*By an absolute majority the question is resolved in the affirmative.*²¹⁰

- 8.44 On the same day, April 3 1929, at the third reading of the Redistribution of Seats Bill 1929 in the Legislative Council, the Deputy President stated:

*“There being no dissentient voice, and there being an absolute majority of the House present and voting, I declare the Bill carried by the necessary constitutional majority.”*²¹¹

Repeal of the *Redistribution of Seats Act 1904*

- 8.45 The *Redistribution of Seats Act 1911* itself repealed the *Redistribution of Seats Act 1904*.²¹² Once again, the *Redistribution of Seats Act 1904* was an “Act for the *Redistribution of Seats at Parliamentary Elections*”, and at s6 stated:

“6. It shall not be lawful to present to the Governor for His Majesty’s assent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.”

- 8.46 The *Redistribution of Seats Act 1911* was passed by an absolute majority of the Legislative Assembly (26 Members in favour and 16 against, out of a total Membership of 50)²¹³ on January 13 1911.²¹⁴ The Speaker of the Legislative Assembly made no comments at either the second or third reading of the *Redistribution of Seats Bill 1911* as to the existence of any requirement for an absolute majority of the Members of the Legislative Assembly to vote in favour of the Bill for it to be passed.

- 8.47 In the Legislative Council on January 24 1911, immediately prior to the third reading of the *Redistribution of Seats Bill 1911*, the President stated:

*“Before this Bill is read a third time I have to state that in accordance with Section 6 of the *Redistribution of Seats Act, 1904*, the third reading of this Bill must be carried with the concurrence of an absolute majority of the whole number of the members for the time*

²¹⁰ Hansard, Legislative Assembly, April 3 1929, pp. 106-107.

²¹¹ Hansard, Legislative Council, April 3 1929, p. 121.

²¹² *Redistribution of Seats Act 1911*, s.7.

²¹³ Then s18 of the *Constitution Acts Amendment Act 1899*.

²¹⁴ Hansard, Legislative Assembly, January 13 1911, pp. 3014 - 3015.

being of the Legislative Council. I declare that the vote just taken is in accordance with the statutory requirement."²¹⁵

THE LEGAL MEANING OF THE WORD "AMEND"

8.48 The *Butterworths Australian Legal Dictionary* defines an "Amending Act" as:

*"An Act of Parliament that amends an earlier Act. An amending Act may operate by substituting, inserting, omitting, or repealing words or provisions in the original Act. A later inconsistent Act repeals, if not expressly then by implication, an earlier Act. An amending Act that breaches binding constitutional requirements is not enforceable."*²¹⁶

8.49 It goes on to define the word "amendment" as follows:

*"Amendment 1. A change or alteration to a document; for example, amending a statement of claim. 2. A change to an existing statute made by an amending Act. In order to give effect to an amendment it is not necessary for the word 'amend' to be used in the amending Act. If the court is satisfied that the later Act is to bring about an alteration in the operation of an earlier Act, the later Act will be treated as an amending Act: for example R v Wheeldon (1978) 18 ALR 619 at 622-3. In statutory interpretation when one Act is amended by a later Act, the two Acts are to be regarded as one connected and combined statement of the will of parliament; Sweeney v Fitzhardinge (1906) 4 CLR 716 at 735."*²¹⁷

8.50 It goes on to define the word "repeal" as follows:

*"Repeal The deletion, omission, or reduction in scope of a statutory provision by another statute. A later statute that provides for the addition of words to a section is an amendment rather than a repeal: Beaumont v Yeomans (1934) 34 SR (NSW) 562 at 569."*²¹⁸

8.51 It goes on to define the phrase "implied repeal" as follows:

²¹⁵ *Hansard*, Legislative Council, January 24 1911, p. 3222.

²¹⁶ *Butterworths Australian Legal Dictionary*, edited by Nygh P E and Butt P, Butterworths, Sydney, 1997, p. 52.

²¹⁷ *ibid.*

²¹⁸ *ibid.*, p. 1012.

“Implied repeal *The rule that where a later Act is inconsistent with an earlier Act, the later Act has repealed the earlier Act by implication: Goodwin v Phillips (1908) 7 CLR 1 at 7; 9 SR (NSW) 65. In statutory interpretation, the courts will only construe an implied repeal if there are very strong grounds to support the implication for there is a general presumption that the legislature intended respective statutory provisions to operate together: Saraswati v R (1991) 172 CLR 1.*”²¹⁹

- 8.52 Section 5 of the *Interpretation Act 1984* provides the following definitions for “amend” and “repeal” when they appear respectively in any written law of the State:

“ **“amend”** means replace, substitute, in whole or in part, add to or vary, and the doing of any 2 or more of such things simultaneously or by the same written law.

...

“repeal” includes rescind, revoke, cancel, or delete.”

- 8.53 The *Interpretation Act 1984* was passed after the *Electoral Distribution Act 1947*. There is a question as to the application of the *Interpretation Act 1984* to the *Electoral Distribution Act 1947* in view of the entrenchment provisions.

ARGUMENTS THAT MANNER AND FORM HAS NOT BEEN COMPLIED WITH

- 8.54 This section represents the views of Hons Peter Foss, George Cash and Paddy Embry MLCs.**

- 8.55 The concept of amendment in the manner that the Western Australian Parliament does it – that is by way of ‘cut and paste’ is a comparatively modern one. Even in recent times, the United Kingdom Parliament’s practice is to pass another Act that deals with the same subject. We can see this method in Western Australia in the *Constitution Act 1889* and the *Constitution Acts Amendment Act 1899*. These are the very set of Acts that the current arguments are about.

- 8.56 This practice has led to the elaborate rules of statutory construction relating to implied repeal or amendment. The idea of a difference between ‘amend’ and ‘repeal’, which may be more obvious in our jurisdiction where we may totally repeal and re-enact

²¹⁹ *Butterworths Australian Legal Dictionary*, edited by Nygh P E and Butt P, Butterworths, Sydney 1997, p. 571.

even though we maintain the essential nature of the legislation, does not fit so well into a legislative practice such as the United Kingdom, or for that matter Western Australia in 1904 when the first of the Acts of which the *Electoral Distribution Act 1947* is the successor was enacted.

- 8.57 Even when, as a tidy up measure a bill was repealed and re-enacted, there are rules of statutory construction relating to the interpretation of re-enactments which treat those latter enactments as if essentially they were the earlier Act amended.
- 8.58 What we have here is a very major change to one section but essentially the electoral procedure remaining otherwise unchanged. It is inappropriate to speak of this not being within the confines of the entrenchment provision in s13 of the *Electoral Distribution Act 1947*.
- 8.59 Professor Greg Craven has argued that the notion of repeal was imagined as being comprehended within the concept of amendment. As he went on to explain in his submission to the Committee:

“The evident intent behind section 13 as an entrenchment provision is to protect the electoral dispositions of the Electoral Distribution Act against disturbance without the attainment of a special legislative majority. Clearly, those dispositions will be just as greatly disturbed – indeed, far more greatly disturbed – by their wholesale elimination as by their specific alteration in one or more respects. Consequently, it would be highly curious were section 13 to be regarded as protecting the Electoral Distribution Act against the making of minor amendments without the achievement of an absolute majority, but not as requiring the achievement of such a majority in the case of the legislative annihilation of the Act. On this basis, it plausibly might be argued that, having regard to its particular purpose and context, that the term “amends” where used in the Electoral Distribution Act has a specialised meaning, and comprehends any legislative action inconsistent with the contents of that Act. On this basis, legislation repealing the Act would fall within the general category of legislation that amends that Act, and would be subject to the special majority requirements of section 13.”²²⁰

- 8.60 A number of celebrated legal cases in Australia and overseas have considered the question of manner and form provisions as they apply to the legislature.

²²⁰ Submission of Professor G.J. Craven, Dean of the University of Notre Dame Australia Law School, dated October 17 2001, p. 4.

- 8.61 To intentionally disregard a valid manner and form provision would be to act beyond the lawful power of the Parliament and any such action would have fatal consequences on the purported legislation resulting from such unconscionable action. Section 6 of the *Electoral Distribution Act 1947* is a law affecting the constitution of the Parliament as it deals with the mode of appointing the Parliament.
- 8.62 Any law purporting to repeal s6 or which has the effect of altering the operation of the Act is clearly a law respecting the constitution of the Parliament and to be valid must be passed in accordance with the specified manner and form requirements.
- 8.63 As to the manner and form requirements set out in the *Electoral Distribution Act 1947*, there is no proviso that s13 of the *Electoral Distribution Act 1947* should be an exception and not apply with equal vigour to the other provisions of the Act.
- 8.64 The intention of the double entrenchment in s13 of the *Electoral Distribution Act 1947* is to signal to the Parliament that any amendment, variation or repeal of the Act is of such importance to the State, that to protect the Act and to avoid manipulation or other undesirable practices, any amendment, variation or repeal of the Act which would have the effect of altering the operation of the Act should be subject to the special procedure provided for in s13.
- 8.65 Professor Greg Craven is of the view that it is “profoundly unclear” whether the repeal of the *Electoral Distribution Act 1947* would or would not fall within the terms of s13 of that Act.²²¹
- 8.66 In its submission to the Committee, the Liberal Party of Australia (Western Australian Division) Inc. noted:
- “On two occasions in 1954 and 1959 successive ALP and Coalition Governments were prevented from amending the Electoral Districts Act by the lack of an absolute majority in the Legislative Assembly. The same constitutional principle in 1936 prevented the Willcock ALP Government from passing a highly partisan redistribution through the Legislative Assembly.”*²²²
- 8.67 Section 13 in its present form prevents the Electoral Distribution Repeal Bill 2001 becoming a valid law without the concurrence of an absolute majority of the whole of the Members of both the Legislative Council and the Legislative Assembly.

²²¹ *ibid.*

²²² Submission of the Liberal Party of Australia (Western Australia Division) Inc., dated October 29 2001, p. 5.

- 8.68 The proposal in the Electoral Distribution Repeal Bill 2001 which purports to repeal the *Electoral Distribution Act 1947* cannot be validly put into effect save by a law which shall have been passed in such manner and form as may be required by any prior law of the Western Australian Parliament.
- 8.69 Section 6 of the *Electoral Distribution Act 1947* is a law effecting the constitution of the Parliament and any purported repeal of s6 will be subject to any manner and form requirement imposed by a prior law binding the Western Australian Parliament.
- 8.70 Section 13 of the *Electoral Distribution Act 1947* is clearly a prior law of the Western Australian Parliament and any purported repeal of this section or of any other provision of the Act will be *void ab initio* if not passed in accordance with the prescribed manner and form requirements set out in the *Electoral Distribution Act 1947*.

The contrived scheme of arrangement

- 8.71 In an effort to achieve electoral change the Government has contrived a scheme of arrangement, by introducing two Bills into the Legislative Council, in an attempt to avoid the absolute majority provisions of the *Electoral Distribution Act 1947*.
- 8.72 The contrived scheme of arrangements is designed to avoid and defeat the entrenchment provisions in the *Electoral Distribution Act 1947* which originated in the *Redistribution of Seats Act 1904*, which was the first redistribution legislated by means other than through the Constitution Acts.
- 8.73 The Electoral Amendment Bill 2001 transfers the substance of the provisions of the *Electoral Distribution Act 1947* to the *Electoral Act 1907*, which does not have the manner and form requirements of the *Electoral Distribution Act 1947*.
- 8.74 It is intended that the Electoral Amendment Bill 2001 will come into operation on a day fixed by proclamation.
- 8.75 The Electoral Distribution Repeal Bill 2001, repeals the *Electoral Distribution Act 1947* and will come into effect on the day on which it receives the Royal Assent.
- 8.76 The contrived scheme of arrangement is an attempt to break the manner and form nexus which attaches to laws affecting the constitution, powers and procedures of the Parliament.
- 8.77 The contrived scheme of arrangement envisages a first step of repealing the *Electoral Distribution Act 1947* by the Electoral Distribution Repeal Bill 2001. Once the *Electoral Distribution Act 1947* is repealed, the Electoral Amendment Bill 2001 can

be proclaimed and hence the substance of the provisions of the *Electoral Distribution Act 1947* will, by this effective substitution, be then part of the *Electoral Act 1907*.

- 8.78 It is important to note that all the provisions of the Electoral Amendment Bill 2001 not currently present in the *Electoral Distribution Act 1947* could have been incorporated into the *Electoral Distribution Act 1947* by an amendment but this course of action would have required compliance with the manner and form provisions.
- 8.79 In essence, the *Electoral Distribution Act 1947* is being amended by substituting its provisions and transferring those provisions to the *Electoral Act 1907*.
- 8.80 The Liberal Party proposes that an amendment be introduced to amalgamate both the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001.
- 8.81 Professor Greg Craven is of the opinion that s13 of the *Electoral Distribution Act 1947* is a valid provision of manner and form within the meaning of s6 of the *Australia Act 1986* (that is it relates to matters pertaining to the powers, procedure and constitution of the Western Australian Parliament), and that it accordingly requires the attainment of an absolute majority in both Houses of the Parliament for any measure that might come within its ambit.²²³ Professor Craven states that he reaches this view on the basis that the provisions of ss 2A, 3, 6 and 9 of the *Electoral Distribution Act 1947*, in erecting a complex system of electoral regions and districts based upon distinctions drawn between metropolitan and non metropolitan areas, and upon social-geographical distinctions drawn between regions themselves, make a fundamental contribution to the basic character of the Western Australian Parliament as a legislative entity.²²⁴
- 8.82 Presumably, for the same reasons, s13 of the *Electoral Distribution Act 1947* would also be valid for the purposes of s5 of the *Colonial Laws Validity Act 1865*.
- 8.83 Cr Doug Krepp, at the hearing in Kalgoorlie, stated that:

“The manner in which these proposed changes are being undertaken, by repealing the Electoral Distribution Act and amending the Electoral Act, is we believe unconstitutional. By undertaking reform in this manner the Attorney General is of the opinion that there does not need to be a constitutional majority in the Legislative Council to repeal the Electoral Distribution Act. ... The Western Australian Government require a constitutional majority of 18 in the Upper

²²³ Submission of Professor G.J. Craven, Dean of the University of Notre Dame Australia Law School, dated October 17 2001, p. 6.

²²⁴ *ibid*, p. 6.

House to amend the act, but considers it can repeal the Act with the 17 votes available with the support of the Greens.

This methodology has been questioned and the motion was passed in the Upper House with the support of the Greens requesting the Attorney General to have the matter adjudicated on by the Full Bench of the Supreme Court of Western Australia is supported and recommended by the City of Kalgoorlie-Boulder. The intention is for the Supreme Court to determine if it is lawful for the electoral laws to be repealed without an absolute majority. This is one of the major concerns of the City of Kalgoorlie-Boulder, the validity of repealing the Act with less than a constitutional majority.”²²⁵

8.84 Mr Brian Laycock, at the hearing in Bruce Rock, stated that:

“The council calls upon the committee to recommend to Parliament that a referendum be held to determine the extent of the mandate for the State Government to interfere with the system of parliamentary representation which has stood the test of time.”²²⁶

8.85 Mr Matt Birney MLA, at the hearing in Kalgoorlie, stated that:

“If the Government takes 99 per cent of what is in this Act and puts it into another Act, that is amending the Bill. The fact that it is torn up in the first place is only symbolic. I would urge the Attorney General, in the interests of democracy - I know he has espoused democracy on a number of occasions - to put that question to the Supreme Court and have it resolved once and for all. This is the biggest change to the electoral system of Western [Australia] in modern history.”²²⁷

8.86 Mr Roger Colless, at the hearing in Broome, stated that:

“To think that the voters are so thick as to accept the misguided logic that prevents amendments to the Constitution then allows this to be completely repealed and re-formulated is quite arrogant in the extreme.”²²⁸

²²⁵ Transcript of evidence of Cr Doug Krepp, Council Representative, City of Kalgoorlie-Boulder, October 21 2001, p. 5.

²²⁶ Transcript of evidence of Mr Brian Laycock, Council Representative, Shire of Quairading, October 22 2001, pp. 2-3.

²²⁷ Transcript of evidence of Mr Matt Birney MLA, Member for Kalgoorlie, October 21 2001, p. 5.

²²⁸ Transcript of evidence of Mr Roger Colless, member of the public, October 30 2001, p. 2.

8.87 At the hearing in Broome, Cr Kevin Fong of the Shire of Broome stated that:

“Constitutionally, if the legislation cannot be amended without an absolute majority, why can it be repealed without a majority vote?”²²⁹

Previous practice of the Legislative Council in requiring an absolute majority

8.88 Given the previous practice of the Legislative Council in requiring the concurrence of an absolute majority of the whole number of Members for the time being of the Legislative Council for the repeal of Electoral Distribution legislation, the President of the Legislative Council is bound by this precedent and is required to follow the long established practice of the Legislative Council.

8.89 The Liberal Party has argued that the contrived scheme of arrangement aimed at avoiding and defeating various entrenchment provisions, will render the Bills void if they are passed by less than an absolute majority.

8.90 Given the uncertainty of the law it is essential that the vote on the third reading of the Bills not be proceeded with until the opinion of the Full Court of the Supreme Court is transmitted to the Legislative Council.

OBSERVATION

8.91 It would be manifestly absurd to suggest that an Act that requires the second and third readings to pass with an absolute majority of the whole numbers of both Houses of Parliament can itself be repealed by a Bill passed by only a simple majority of the whole numbers of either House.

RECOMMENDATIONS

Recommendation of a Minority

Recommendation I: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001 be amalgamated.

²²⁹ Transcript of evidence of Cr Kevin Fong, President, Shire of Broome, October 30 201, p. 3.

ARGUMENTS THAT MANNER AND FORM IN S13 OF THE *ELECTORAL DISTRIBUTION ACT 1947* DO NOT APPLY

8.92 This section represents the view of Hons Jon Ford, Kate Doust and Adele Farina MLCs.

8.93 Section 6 of the Australia Acts 1986 (Cth & UK) do not apply to s13 of the *Electoral Distribution Act 1947* for the reason clearly demonstrated in *Wilsmore v WA* [1981] WAR 159 (approved in *McGinty v Western Australia*) that electoral matters do not fall within the context of “the constitution of either House”. Section 6 applies to that restricted class of legislation “...respecting the constitution, powers or procedures of the Parliament of the State”. Accordingly, s13 stands alone and must be construed within its own terms.

8.94 As previously stated in the report, s13 of the *Electoral Distribution Act 1947* imposes a manner and form requirement for amending the Act. Section 13 provides that:

“13. It shall not be lawful to present to the Governor for Her majesty’s assent any Bill to amend this Act, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of members for the time being of the Legislative council and the Legislative Assembly respectively.”

8.95 Section 13 of the *Electoral Distribution Act 1947* is valid and effective, and must be complied with. Their Lordships in *Bribery Commissioner v Ranasinghe*²³⁰ (when commenting on *Attorney General (NSW) v Trethowan*)²³¹, held that:

“...where a legislative power is given subject to certain manner and form, that power does not exist unless and until the manner and form is complied with.”

8.96 Their Lordships further said, at 197-8:

“...that a legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law. This restriction exists independently of the question whether the legislature is sovereign.....or whether the Constitution is ‘uncontrolled’.....But the proposition which is not

²³⁰ [1965] AC 172 at 1999.

²³¹ [1932] AC 526; (1931) 44 CLR 394.

acceptable is that a legislature, once established, has some inherent power derived from the mere fact of its establishment to make a valid law by the resolution of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process”²³²

- 8.97 The Electoral Distribution Repeal Bill 2001, as the name suggests, repeals the *Electoral Distribution Act 1947*.
- 8.98 It is argued by the Liberal Party and One Nation Party members of the Committee that the intent behind s13 is that the term ‘*amends*’ where it appears in the *Electoral Distribution Act 1947* means any legislative action inconsistent with the Act, including a repeal of the Act, would be subject to the absolute majority requirement of s13.
- 8.99 In considering the question of the meaning of ‘*amend*’ it is interesting to consider other manner and form provisions.
- 8.100 The manner and form provision in *Attorney General (NSW) v Trethowan*, s7A of the *Constitution Act 1902* (NSW), provided that:²³³

“(1) The Legislative Council shall not be abolished nor, subject to the provisions of sub-section six of this section, shall its constitution or powers be altered except in the manner provided in this section.

(2) A Bill for any purpose within sub-section one of this section shall not be presented to the Governor for His Majesty’s assent until the Bill has been approved by the electors in accordance with this section.

...

(6) The Provisions of this section shall extend to any Bill for the repeal or amendment of this section.”

- 8.101 The High Court of Australia held by a majority that s7A could not be repealed without complying with the manner and form procedures contained in the section. This decision was affirmed by the Privy Council on appeal.
- 8.102 However, the manner and form requirement provided for by s13 of the *Electoral Distribution Act 1947* differs significantly from that contained in s7A of the

²³² See observation of Gummow J in *McGinty v Western Australia* (1996) 70 ALJR 200 where he questioned the validity of manner and form provisions inserted into a law where the manner and form to be required was not observed in making that insertion.

²³³ [1932] AC 526]; (1931) 44 CLR 394.

Constitution Act 1902 (NSW). Subsection (6) clearly placed a restriction on the repeal or amendment of the manner and form provision itself. By contrast, s13 contains only one restrictive procedure that applies to ‘any Bill to amend this Act’. This would include a Bill to amend s13. Significantly, however, s13 does not refer to Bills to repeal ‘this Act’.

8.103 From the outset as s73(1) of the *Constitution Act 1889* (WA) demonstrates the words ‘alter and repeal’ are used when the legislative intention is to apply manner and form to both amendments and repeals in the sense of out right ‘repeal’.

8.104 Historically ‘amend’ and ‘repeal’ have been regarded as being distinct.

8.105 The definitions of ‘amend’ and ‘repeal’ in s5 of the *Interpretation Act 1984* reflect this historical distinction:

“‘amend’ means replace, substitute, in whole or in part, add to or vary, and the doing of any 2 or more of such things simultaneously or by the same written law”

...

“repeal” includes rescind, revoke, cancel or delete”

8.106 A Bill to repeal s13 could still fall within the meaning of ‘any Bill to amend this Act’ as the revocation of a single provision would ‘vary’ the *Electoral Distribution Act 1947* itself. As Gummow and Hayne JJ observed in *Kartinyeri v Commonwealth*²³⁴:

“An amendment may take the form of, or include, a repeal. Thus, if a section is deleted it can be said that it has been repealed whilst the statute itself has been amended.”²³⁵

8.107 It is straining the meaning of amend to extend it to a Bill repealing the *Electoral Distribution Act 1947* in its entirety given that nothing is offered in its place.

8.108 As previously stated in the report, there is a view that the *Interpretation Act 1984* being later in time to the *Electoral Distribution Act 1947*, might prevent application of the definitions contained in the *Interpretation Act 1984* to the *Electoral Distribution Act 1947*. However, that argument does not seem to sit well with s8 of the same Act which, as the headnote suggests, provides that a law is always speaking.

²³⁴ [1988] HCA 22.

²³⁵ See also Bennion, *Statutory Interpretation*, 3rd ed (1977) pp. 210-1.

- 8.109 At the time the *Electoral Distribution Act 1947* was enacted the *Interpretation Act 1918* applied. Although it did not define ‘amend’ or ‘repeal’ it seems clear that the words were considered to have different meanings. For example, s44 of the *Interpretation Act 1918* stated ‘Any Act may be altered, amended or repealed in the session of Parliament in which it is passed’.²³⁶ Although it is recognised that there can be a degree of overlap, historically the two concepts have been regarded as quite distinct.²³⁷
- 8.110 Section 73 of the *Constitution Act 1889* can never apply to an electoral distribution Act for two reasons:
- 8.110.1 Section 73 applies to Bills that amend a provision of the *Constitution Act 1889* itself.
- 8.110.2 The constitution of the Legislative Council and the Legislative Assembly does not include the electoral matters dealt with in the *Electoral Distribution Act 1947*.²³⁸
- 8.111 The clear intent of s13 is to ensure that the regime in the *Electoral Distribution Act 1947* is not manipulated for political gain. It was supposed that the support of both sides would be required to secure the special majority rather than place the system at the mercy of the Government of the day using its numbers through a simple majority.
- 8.112 Very different considerations apply when rather than alter the current system the proposal is to change that entirely and replace it with another system based on different principles.
- 8.113 It would be an unnecessary and undesirable situation for one Parliament to impose restrictions on a policy change through a special majority requirement. It cannot be supposed that a Parliament in 1947 or 1987 would intend that policy changes reflecting changes in community attitudes would impose artificial restrictions on the ability of Parliament to make these changes.

Previous practice of the Legislative Council in requiring an absolute majority

- 8.114 Regardless of what the records show has been the practice of either House in relation to Bills thought to require passing their second and third readings with a special majority, the rulings of presiding officers and what may have come to be an accepted

²³⁶ See also ss 12 – 14.

²³⁷ *Mathieson v Burton* (1971) 124 CLR 1, per Windeyer J at 10 – 11; *Kartinyeri v Commonwealth*, above n 11, per Brennan CJ and McHugh J at 353 – 354, Gummow and Hayne JJ at 375 – 376.

²³⁸ *Wilsmore v Western Australia* [1981] WAR 159; approved in *McGinty v Western Australia*.

usage does not bind the Legislative Council as it now is. In 2001 the Legislative Council is free to decide for itself whether any particular Bill is to be passed with a special majority. Although precedent may be seen as having a persuasive voice, nonetheless if it is wrong the error should not be perpetuated simply because “that’s the way we have always done it”.

OBSERVATION

8.115 “*Amend*” and “*repeal*” are distinct concepts. If the Parliament had intended “*amend*” to include “*repeal*” it would have legislated to require it.

CHAPTER 9

THE ARGUMENTS FOR AND AGAINST HOLDING A REFERENDUM IN RELATION TO THE BILLS

ARGUMENTS FOR A REFERENDUM

- 9.1 This section represents the views of Hons Peter Foss, George Cash and Paddy Embry MLCs.**
- 9.2 The Liberal Party strongly supports and urges the Government to hold a referendum on the significant changes to Western Australia's electoral system which are proposed in the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001.
- 9.3 The *Referendums Act 1983* provides the necessary statutory authority and framework to carry out a referendum.
- 9.4 Significant changes to the electoral system should not be made without consultation with those affected. People have a right to be consulted and heard particularly when a Government sets out to manipulate the electoral system to reduce their political rights and ability to be heard effectively.
- 9.5 A referendum is an important and powerful tool which allows the majority to have its voice listened to at a time when a manipulative Government attempts to shift the balance of power in its political favour at the cost of a legitimate minority.
- 9.6 A referendum is not a barrier to good parliamentary Government. It can be used to defuse a political situation where a Government is seen to be acting in an immoral, unethical or unconstitutional manner.
- 9.7 A referendum is the purest way of determining policy on issues that go to the core of the electoral system. Voters must have the right to be properly informed of the issues and have a right to cast a vote in determining a democratic decision. A Government that refuses to hear the voter's wishes inevitably distorts the will of the voter and democracy is diminished.
- 9.8 A referendum can be used as an aid to the parliamentary process. The tendency of government to avoid and ignore legitimate informed public opinion on contentious issues on which many people seriously believe their rights are adversely affected is damaging to democracy and is liable to engender distrust and disillusionment with the democratic process.

- 9.9 A referendum can enhance democracy and its impact on the efficiency and effectiveness of representative democracy.
- 9.10 A referendum will allow the people to intervene in the political process and to be involved at the highest level, providing them with an opportunity to express their view on fundamental changes to the electoral system.
- 9.11 A referendum provides the highest degree of legitimacy when informed electors cast their vote on matters of high public policy.
- 9.12 A referendum can promote honesty in government and eliminate political corruption, bias, prejudice and discrimination by including the people in the selection and implementation of policy alternatives.
- 9.13 The proposed Bills are designed for political expediency and are intended to be used by the Labor Government to entrench itself in power. Winning an election does not give a government the right to hijack the electoral system and manipulate changes for the express political benefit of the government.
- 9.14 A major element in determining the result of a referendum is to be found in the way the question is put to the voters. The wording of the referendum question is a matter of significant importance. It is incumbent on government to ensure the proposed legislative objectives are clearly explained to voters by conducting an extensive education campaign fostering wide understanding and transparency of the proposals, ensuring adequate voter consultation and participation.

The need for a referendum on the Bills

- 9.15 A number of witnesses raised the need for a referendum to be held on the proposed changes to the electoral system and expressed their views in the following manner:
- 9.15.1 The PGA is of the view that the issues raised by the Bill are of such importance that they should be the subject of a referendum.²³⁹ The WAFF also supported the idea of the Bills being put to a referendum.²⁴⁰
- 9.15.2 The Liberal Party of Australia (Western Australian Division) Inc. advised the Committee of its belief that the Bills should be submitted to the electors of Western Australia for their approval in a referendum:

²³⁹ Submission of the Pastoralists and Graziers Association, dated November 7 2001, p. 2.

²⁴⁰ Submission of the Western Australian Farmers' Federation, dated November 7 2001, p. 4.

“It is therefore just and appropriate that a very major change to our State’s electoral system be submitted to the electors by way of a referendum. In a referendum there will be perfect “one vote one value” as no electoral boundaries between city and country, or between safe and marginal seats, can prevent the YES or NO cases from winning if they achieve more than 50% of the vote. If the Government is so convinced of the rightness of its policy then they should not fear a referendum, and should welcome the opportunity to have their policy endorsed directly by the voters.”²⁴¹

- 9.15.3 The submission of the Shire of Dandaragan also supported a referendum on the Bills:

“Australians and Western Australians have been asked in the past on how they should be governed, the most recent constitutional referendum being a Federal one as to whether we should become a republic. We have been asked in the past as to whether we wished to have daylight saving, yet on this matter of major importance we are not to be consulted.”²⁴²

- 9.15.4 The Shire of Derby/West Kimberley was also in favour of a referendum on the Bills, to be held either immediately, or at the same time as the next State general election.²⁴³

- 9.15.5 The Shire of Plantagenet expressed the view in its submission that a referendum should be mandatory for any fundamental change to electoral representation.²⁴⁴ The Pilbara Regional Council also supported a referendum on the Bills.²⁴⁵

ARGUMENTS AGAINST A REFERENDUM

- 9.16 **This section represents the view of Hons Jon Ford, Kate Doust and Adele Farina MLCs.**

²⁴¹ Submission of the Liberal Party of Australia (Western Australian Division) Inc., dated October 29 2001, p. 6.

²⁴² Submission of Shire of Dandaragan, dated October 23 2001, p. 2.

²⁴³ Submission of the Shire of Derby/West Kimberley, dated November 1 2001, p. 1.

²⁴⁴ Submission of the Shire of Plantagenet, dated November 2 2001, p. 2.

²⁴⁵ Submission of the Pilbara Regional Council, undated, p. 4.

- 9.17 There is no legal or statutory requirement for a referendum. The restrictive procedure set out in s13 of the *Electoral Distribution Act 1947* is limited to the requirement that any Bill to amend this Act be passed at the second and third readings with an absolute majority. There is no requirement for a referendum.
- 9.18 There is no precedent for a referendum on the question of electoral reform.
- 9.19 Since 1889 the electoral laws of Western Australia have been the subject of numerous significant changes by governments of both political persuasions. On no previous occasion was a referendum held to determine a change in the electoral laws.
- 9.20 The question of a referendum received conflicting comment when put to witnesses making oral submissions to the Committee.
- 9.21 Cr Kevin Richards, at the hearing in Karratha, gave only qualified support for a referendum, saying that he would only support a referendum if metropolitan people were excluded from voting:

*“I would only support a referendum if it was run in regional areas. To most people in Perth, a referendum on this would mean nothing. In Perth, they talk about their country cousins. We used to give them laxettes and call them chocolates and the people who came down from the bush never knew the difference. It is not a big problem to most people in Perth, but it is a great problem to u. It is almost like asking what the people in Greece think about the beach in Cottesloe.”*²⁴⁶

- 9.22 Mr Mark Hook, at the hearing in Carnarvon, also gave qualified support for a referendum, saying his support for a referendum would very much depend on the question put:

*“It is always interesting to read referendum questions - if you would give me the question. How the question would be put to the people to get the right answer would be an important part of it. Going through the history of referendums, I do not know whether they are good or bad. It may be worthwhile that the matter go to a vote, and a referendum is the best way to do it.”*²⁴⁷

²⁴⁶ Transcript of evidence of Cr Kevin Richards, President, Shire of Roebourne, October 31 2001, p. 6.

²⁴⁷ Transcript of evidence of Mr Mark Hook, Chief Executive Officer, Shire of Shark Bay, November 1 2001, p. 2.

- 9.23 Mr Malcolm Mummery, Vice President, Electoral Reform Society of Western Australia, on a question by Hon George Cash MLC, at the hearing in Perth, said that the Society did not have a position on the question of a referendum:

*“The society has no view on that. It has not considered it.”*²⁴⁸

- 9.24 Cr Peter Piesse, at the hearing in Wagin, supported a referendum:

*“Surely on an issue as complex and important to our futures as this, a referendum would be the fairest way to let the people decide if this legislation were to go ahead.”*²⁴⁹

- 9.25 Mr Rick Dexter, at the hearing in Wagin, reserving his opinion on the merit of a referendum, queried whether such a referendum would be limited to country WA:

*“Several of the witnesses have referred to the possibility of a referendum being the ideal method of settling this matter ... Would it be local, confined to the country areas, the city, the whole of Western Australia or Australia- wide?”*²⁵⁰

- 9.26 Mr Ian Mangan, at the hearing in Jerramungup, expressed concern that country voters could be outvoted in a statewide referendum and the need for voters to be fully informed on the issues:

*“The population in the country is much smaller than it is in the city. We could be outvoted. ... I do not know about the referendum part of it. As long as people are fully informed, it could be an option. I will not say yes or no.”*²⁵¹

- 9.27 Mr John Bain, at the hearing in Manjimup, expressed some support for a referendum, provided that it was worded properly:

“I can see no reason that the system should be changed at the moment, notwithstanding a referendum in which people get perhaps a choice of two questions. I am not an expert in the field. I do not know

²⁴⁸ Transcript of evidence of Mr Malcolm Mummery, Vice President, Electoral Reform Society of Western Australia, November 7 2001, p 1.

²⁴⁹ Transcript of evidence of Cr Peter Piesse, Shire of Wagin, November 4 2001.

²⁵⁰ Transcript of evidence Rick Dexter, member of the public, November 4 2001.

²⁵¹ Transcript of evidence of Mr Ian Mangan, November 4 2001, p. 2.

*how to word it properly. There should be at least a referendum or it should be left as it is.*²⁵²

- 9.28 Cr Doug Krepp, at the hearing in Kalgoorlie, expressed his doubts as to the value of a referendum:

*“When it comes to an election, they generally vote for what the party puts forward, whether it is electoral reform or whatever. It comes part of the total vote.”*²⁵³

- 9.29 Mr Jim Fraser, at the hearing in Kalgoorlie, said he and others he had spoken to supported a referendum:

*“I have spoken about it to a number of people, and they agree.”*²⁵⁴

- 9.30 Mr Dick Thorp, at the hearing in Esperance, in reply to a question by Hon George Cash MLC as to the question of a referendum, said he supported a referendum:

*“Yes”*²⁵⁵

- 9.31 Mr Stephen Strange President, Shire of Bruce Rock, at the hearing in Bruce Rock, opposed a referendum, expressing concerns that one vote one value would strike a cord with many people:

“Hon George Cash: ...Do you think a referendum is one way of getting the view of the people about what some have said is the most significant electoral change for Western Australia in the past 50 years.

Mr Strange: ...A referendum would be stacked one way because of our population. One vote, one value does hit a very strong warm fuzzy chord with a lot of people. I do not think that would help. We have the people to make decisions now. As far as the social issues are concerned, it does not stack up.

²⁵² Transcript of evidence Mr John Bain, member of the public, November 5 2001, p. 2.

²⁵³ Transcript of evidence of Cr Doug Krepp, City of Kalgoorlie-Boulder, October 21 2001.

²⁵⁴ Transcript of evidence of Mr Jim Fraser, Chief Executive Officer, Shire of Coolgardie, October 21 2001.

²⁵⁵ Transcript of evidence of Mr Dick Thorp, Esperance Chamber of Commerce, November 21 2001.

Hon George Cash: Do you think there is a need for a referendum of Western Australians?

Mr Strange: No²⁵⁶”

- 9.32 However a fundamental argument against a referendum is that it is indeed a complex matter with no simple outcome and should be properly dealt with by Parliament.

“The referendum is based on the unrealistic assumption there is a simple yes or no answer to complex questions.”²⁵⁷

OBSERVATIONS

Observations of Hons Jon Ford, Kate Doust and Adele Farina MLCs

- 9.33 During the State election campaign of February 2001 the issue of one vote one value figured prominently in rural and remote parts of Western Australia as well as the metropolitan environs. The Liberal Party of Australia (Western Australia Division) Inc ran an extensive and highly emotive campaign in the print media, radio and on television. The Liberal Party of Australia (Western Australia Division) Inc’s campaign generated community debate on the issue. The Labor Party confirmed its position on electoral reform if elected.
- 9.34 Despite the negative campaign engineered by the the Liberal Party of Australia (Western Australia Division) Inc, “don’t vote for the Labor Party or else you will lose 16 seats in the bush to the city”, the Labor Party won 13 country seats including Bunbury, Albany, Collie, Geraldton, Mandurah, Kimberley and Eyre. Other seats won in the outer metropolitan areas targeted by the Liberals negative one vote one value campaign included Roleystone, Wanneroo and Swan Hills. Despite the the Liberal Party of Australia (Western Australia Division) Inc’s campaign on one vote one value, the voting public of Western Australia did not regard this issue as important as others such as health, education and police when it came to casting their vote on election day.
- 9.35 To suggest that a referendum is now required because the public were not aware of the Labor Party’s position on this issue is misleading.
- 9.36 A referendum can be used to manipulate a particular political outcome by the framing of the referendum question.

²⁵⁶ Transcript of evidence of Cr Stephen Strange President, Shire of Bruce Rock, October 22 2001.

²⁵⁷ Zimmerman J F, *Participatory Democracy: Populism Revived*, New York: Praeger, 1986, p. 57.

- 9.37 History has demonstrated that despite the best endeavours of governments to inform voters on matters that are the subject of a referendum, many voters when casting their votes remained uninformed and with an abundance of caution vote the referendum down.
- 9.38 In its submission to the Committee, the Labor Party summarised the numerous significant changes that have been made to Western Australia's electoral laws by successive governments of both political persuasions since the 1890s and noted that:

“It should be highlighted that on no occasion was a popular plebiscite held to determine a change in electoral laws.”²⁵⁸

Observations of Hons Peter Foss, George Cash and Paddy Embry MLCs

- 9.39 During the State Election of February 2001 the Labor Party made misleading statements in the media in which it denied the likely impact on rural and remote areas of one vote one value. The only area where the issue was appropriately canvassed was in the Kalgoorlie area where the voters rejected the Labor Party going against a general tide of public opinion on other matters. This shows that where voters vote on a particular issue they are able to make a proper distinction on the merits.
- 9.40 At every General election there are a multitude of considerations and issues before the electorate. The basis and weight of decision on particular issues and whether they were considered or known at all is, like the ballot, secret.
- 9.41 If there is a vitally important issue, and both the Labor Party and Liberal Party agree that it is an important issue, then the only manner in which it can be guaranteed that the issue will not only be put to the electorate but also that an informed decision will be made upon that issue is to hold a referendum.
- 9.42 A referendum can be used to defuse a political situation where a government is seen to be acting in an immoral, unethical or unconstitutional manner.
- 9.43 We consider that the electorate would support, as a matter of justice, the concept of rural vote weighting. The principles espoused by the Labor Party would be satisfied if, on an equal vote basis, voting on the issue, the people of Western Australia were to decide in favour of it. Country people, on the other hand, if the decision were adverse, would accept that they were not the victims of deprivation by stealth and discrimination without a mandate or popular support.

²⁵⁸ Submission of the Western Australian Branch of the Australian Labor Party, undated, p. 3.

9.44 In view of the divisiveness of this measure – far more divisive and important than daylight saving – it would seem democratic and statesmanlike to hold a referendum.

RECOMMENDATIONS

Recommendation of a Minority

Recommendation J: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that the Electoral Distribution Bill 2001 and Electoral Amendment Bill 2001 be amended to provide that they not come into effect until they have been submitted to a referendum of the people.

CHAPTER 10

RESOURCES FOR MEMBERS OF PARLIAMENT

EFFECT OF THE BILLS ON RESOURCING

- 10.1 The Committee is of the view that extra resourcing of Members servicing regional and rural electorates is required in any event, and even more so if the proposed measures are agreed to.

Current resourcing

- 10.2 Resources provided to Members of Parliament in Western Australia are determined and funded by a number of different agencies.
- 10.3 Determinations of the Salaries and Allowances Tribunal are in the main, funded by standing appropriations whilst other resources are determined and funded by the Department of Premier and Cabinet and both the Department of the Legislative Assembly and the Department of the Legislative Council.
- 10.4 Currently the allowances include:²⁵⁹
- 10.4.1 Each Member is entitled to an electorate office for the purpose of conducting their parliamentary and or electorate duties. This includes furniture, fittings, equipment and cleaning. Each Member is entitled to one full time electorate officer and one 0.4 full time equivalent (FTE) research officer.
 - 10.4.2 In addition, every Member provided with an electorate office shall receive, as an allowance, reimbursement of the rental and all charges for calls incurred by that Member in respect of five approved telephone lines in that Member's electorate office to be used for telephones, facsimile and modem connection.
 - 10.4.3 Each Member receives a base electorate allowance of \$21, 000 per financial year. In recognition of increased expenditure incurred by Members servicing large and or non metropolitan electorates the following additional amounts are paid:

²⁵⁹ *Gazette* No 172, August 24 2001. Note: not all allowances are included and terms and conditions do apply to these allowances.

Electoral Region	Charter Transport (including aircraft, cars and taxis)	Additional Allowance per annum (\$)
Metropolitan Regions		1650
Roleystone, Swan Hills		1650
Wanneroo		10 500
Albany, Bunbury, Dawesville & Mitchell		400
Vasse		2 100
Collie & Murray-Wellington		3 800
Stirling and Warren Blackwood	6000	7 200
Geraldton		400
Avon and Wagin	6000	7 200
Greenough, Merredin, Moore and Roe	14 500	10 600
Kalgoorlie		400
Eyre, Ningaloo & Pilbara	26 500	16 500
Burrup, Kimberley,	18 000	16 500
South West Region	14 500	8 500
Agricultural Region	18 000	12 000
Mining and Pastoral Region	26 500	17 500

- 10.4.4 Accommodation costs of up to \$12 800 per year and associated expenditure is provided to Members who represent the Mining and Pastoral, Agricultural or South West Regions or any district within those regions (based on 80 nights at Rate A accommodation (\$160 per night), for the purposes of official duties pertaining to Parliament or electoral matters (except if the Member's sole residence is in the metropolitan area). Members of the regions or any district within those regions may also claim travelling allowances for overnight stay at a place in or adjacent to their electorate but not within a radius of 50 kilometres of the Member's principal place of residence for up to 50 nights in

the regions and 30 – 40 nights in the districts. The current rate is \$175 per night (Western Australia, South of the 26° parallel).

- 10.4.5 The following additional annual allowances are provided to Members who represent the metropolitan or non metropolitan regions. The allowances for the metropolitan and non metropolitan regions are shown in the table below:

	Non metropolitan	Metropolitan
Mobile Phones	\$ 1 800 maximum	\$ 1 200 maximum
Postage	\$ 6 000	\$ 6 000
Printing and Stationery	\$ 4 500	\$ 4 500
Electorate Allowance	\$ 21 000	\$ 21 000

- 10.4.6 Every Member of Parliament is provided with a vehicle. Where a Member chooses not to join the leased vehicle scheme, \$6 600 per annum is payable in lieu thereof to cover the cost of running a private vehicle. Where a Member uses a private vehicle, a motor vehicle allowance is payable between the Members residence and Perth provided such travel is for the parliamentary purposes. The allowance can only be claimed on the distance travelled in excess of 100 kilometres return.
- 10.4.7 \$6 000 per financial year is provided to the electoral districts of Albany, Geraldton and Kalgoorlie only, for car hire whilst in Perth or the electorate on parliamentary and or electorate business.
- 10.4.8 A sum of money, known as imprest, is available to each Member (valid for the life of the Parliament). The amount allocated for the 35th Parliament was \$17 590. It is an entitlement which is to be used only for the purpose of meeting the cost of fares for travel by a Member and/or spouse, except that a travel allowance may be drawn. The travel allowance is to cover accommodation and meal expenses of a Member and/or spouse, at a rate determined by the Treasurer. (The rate is currently set at \$250). The purpose of all imprest funded travel must be related to the legitimate parliamentary and/or electorate responsibilities of the Member and is not to be for private reasons or associated with commercial or business purposes.
- 10.4.9 Members' private residence telephones are reimbursed the cost of the rental plus 85% of all call charges – this applies to one standard telephone line, an additional line for facsimile and one additional line for computing equipment.

- 10.5 The resources of Members are derived from a number of areas. This is not only inefficient and confusing but also appears to be wrong in principle. To the extent that resources are provided through the Department of Premier and Cabinet this gives the Executive an inappropriate control over the Parliament.
- 10.6 As a general rule, apart from those matters with a standing appropriation, the resources provided to Members should be administered by the Parliament through the Department of Parliamentary Services. The current budget should be transferred to Parliament and argued for in future years with the remainder of the parliamentary budget. The general nature of resources and their method of allocation should be either fixed or recommended by the Salaries and Allowances Tribunal.
- 10.7 COG recommended:
- “3. Communication, administrative and staffing facilities for remote and large electoral districts should be improved to include the following:*
- (a) free telephone service to contact the member of parliament;*
 - (b) more than one electoral office in the district;*
 - (c) appointment of agents to act as contact points for the member of parliament;*
 - (d) teleconferences using Telecentres and WALINK facilities;
and*
 - (e) computer bulletin board systems for two-way messages
between members of parliament and electors.”*
- 10.8 It is probably a comment on the rapid development of technology and the Internet that COG recommended a bulletin board for two-way messages. As referred to in (e) above, no doubt if considered today, the recommendation would be for a web site for each Member. This is a comparatively cheap and beneficial way to communicate.
- 10.9 COG’s recommendation recognises that Legislative Assembly districts under a system of electorates with equal enrolments may be very large. In such districts, and Legislative Council regions, electors will require extra assistance in accessing their respective Parliamentarian.
- 10.10 As recommended by COG, the most appropriate way for this to occur is for extra resources to be provided to rural and remote Members in the form of office space and

staffing, as well as extra resourcing for phone, video and computer linking with electors.

10.11 However, while the appointment of electoral agents, as recommended by COG, may appear to have some merit, electoral agents are not directly employed by the Member and thus have no direct responsibility to the Member. It is far more appropriate that Members have remotely located staff directly reporting to them to maintain responsibility for the information flow between the Member and elector.

10.12 Staffing levels for all Parliamentarians continues to be an issue when the volume of work expected to be researched and understood by the Members is increasing. If Parliament is to be effective, Members need to be properly informed on all aspects of legislation proposed. Staffing levels in electorate offices therefore need to be increased for all Members.

RECOMMENDATIONS

Recommendations of the Committee - Unanimous

Recommendation 10: The Committee recommends that extra resources be provided to rural and remote Members in the form of extra office locations, additional staff, additional travel and accommodation allowance, and increased mobile telephone allowance.

Recommendation 11: The Committee recommends that the research capacity of all Members be increased from a 0.4 FTE to a 1.0 FTE.

Recommendation 12: The Committee recommends that all Members be provided with resources to establish and maintain a website.

Recommendation 13: The Committee recommends that the administrative functions relating to Members resources be carried out by a single entity, namely the Department of Parliamentary Services subject to the determinations and recommendations of the Salaries and Allowances Tribunal.

Recommendation 14: The Committee recommends that allowances paid to Members be reviewed following each redistribution to ensure that Members' allowances are commensurate with any variation of electoral district resulting from the redistribution.

CHAPTER 11

OTHER ISSUES RAISED DURING THE COURSE OF THE INQUIRY

INTRODUCTION OF PROPORTIONAL REPRESENTATION IN THE LEGISLATIVE ASSEMBLY

- 11.1 In its submission to the Committee, The Greens (WA) restated its platform on Reform of Government from the 2001 State election in which the party supported “*reform of the electoral system, particularly to enshrine one vote one value and introduce proportional representation into the Legislative Assembly*”.²⁶⁰
- 11.2 There is some sympathy for a different model of representation that may more accurately reflect community wishes within the State of Western Australia. This model would follow along the lines of a proportionally elected Legislative Assembly.
- 11.3 Our current system of government is based on the Westminster system, following from the system of government in the United Kingdom. A dominant feature of this system is single Member electorates, whereby one Member of Parliament represents a defined geographical area.
- 11.4 COG recognised that:
- “The advantage of any proportional representation system is that it creates a parliament which is an accurate reflection of public support for all political parties on polling day. This is achieved by ensuring that the number of seats won by each party is proportional to the number of votes that each party receives. This allows minor parties and independents, with broad rather than geographically concentrated support, to gain representation. The result is a more accurate reflection of the voters’ wishes, as political parties are more likely to receive the proportion of seats to which they are entitled. The interests and ideas represented in any house chosen by proportional representation are likely to be more diversified than under a majoritarian system.”*
- 11.5 As this matter is outside of the terms of reference for this inquiry, the Committee makes no comment on this issue.

²⁶⁰ Submission of The Greens (WA), dated October 23 2001, p. 2.

THE IMPACT OF SUCCESSIVE GOVERNMENT POLICIES ON RURAL AND REMOTE COMMUNITIES

- 11.6 There is significant concern in regional Western Australia regarding the introduction of one vote one value. Many of the concerns raised regarding electoral reform, however, relate more strictly to government policies and funding priorities than the electoral system as such.
- 11.7 This is said to be due to a series of decisions by successive State and Federal governments which has led to a slow decline in population numbers in rural and remote communities. Some of the issues that have a direct impact on these communities require some examination in the context of electoral reform.
- 11.8 Government needs to address these macro policy issues which are causing concern to country people. These concerns include: loss of rural services, whether public or private; lack of funding commitments to rural communities to maintain standards of living; and the failure of government policies such as national competition policy and the privatisation of rail and other essential services.
- 11.9 Until these macro policy issues are given due consideration, and adequate measures taken to address the most pressing issues, country people will continue to feel and express dissatisfaction with processes that appear to disenfranchise and disempower them.

Fringe Benefits Tax

- 11.10 The imposition of the Fringe Benefits Tax has had a direct impact on the provision of benefits to employees, particularly in the mining industry but also in terms of services such as health in rural communities. This has led to a lessening of pay and conditions for staff and a commensurate decrease in the willingness of people to work in rural and remote communities.

National Competition Policy

- 11.11 The Committee heard evidence as follows:
- 11.11.1 Macro policies such as National Competition Policy have had an indirect impact on rural communities in the loss of jobs and employment opportunities. As large companies may be able to provide cheaper services and products than local companies, they are automatically advantaged. Attempts such as local government attempts to purchase locally are not permitted under policies such as the National Competition Policy. While this may lead to some short term lowering of prices, the long term effect is to see

local services and producers disappearing, with a commensurate drop in rural populations as people move to seek work.

State Agreement Acts

- 11.12 State Agreement Acts are agreements negotiated between government and a developer that set out the entitlements and obligations of the State Government and private developers in relation to major resource projects. The majority of Western Australia's major resource development projects operate under such Acts.
- 11.13 There are a number of reasons why governments and proponents enter into State Agreements but, in effect, they operate on the assumption that both parties benefit as a result.
- 11.14 Special assistance via these Acts assumes that large resource development projects deserve more assistance than other development models. However, there is no inherent review to check whether the objects of the legislation have been met.
- 11.15 Cr Bob Neville, at the hearing in Port Hedland, stated the following in an exchange with Hon Paddy Embry MLC:

***Hon PADDY EMBRY:** When you say you pay a high rate of taxes are you referring to shire rates as a landowner or are you referring to income tax?*

***Mr Neville:** I am referring to all of it. Yes we pay a high proportion of rates in this town because the State Government allows the resource companies grace on rates; therefore, we cannot rate them. We pay I believe about 34 per cent higher rates on our land to make up for the land that is not taxed by resource companies such as BHP, Cargill Salt and any other mining tenement around the area. We pay GST the same as everyone else, but the cost of our newspaper is much higher; therefore, we pay a higher rate of GST across the board for every commodity and every service in this area. The Australian Bureau of Statistics indicates that the proportion of income tax paid from here is very high. The amount of taxation we pay muddles the statistics. However, we pay a lot of other taxes, including payroll tax to the state and federal Governments.*

***Hon PADDY EMBRY:** I understand exactly where you are coming from. I also come from a very isolated part of the State, but at the opposite end. If you had control of the State for a day, what would you do about the situation? You obviously feel you are not getting a*

fair go under the present system. I understand you feel it would be worse with the change. You are the man in charge for a day what would you do to enhance the situation for your area?

*Mr Neville: I would abolish the state agreement Acts or return the royalties to the Pilbara or to the remote areas. That would provide equity.*²⁶¹

Fly In Fly Out

- 11.16 A number of submissions and witnesses from rural and remote areas, particularly in the Mining and Pastoral Region, raised the issue of the effect that the private sector's practice of 'fly in fly out' for its workers had had on the population and therefore the political representation of rural and remote areas.
- 11.17 Fly in fly out, as a deliberate policy of companies, particularly in the mining industry, has seen significant numbers of people who otherwise would have lived and worked within local communities be replaced by people who live on-site for short periods of time, returning home to, in many cases, the Perth metropolitan area. This further centralises population and employment opportunities within Perth, reducing employment opportunities in local communities. This has the direct effect of reducing opportunities for young people or establishing businesses, exacerbating the loss of local business and the general increase in the average age of rural populations. This seriously threatens the viability of rural communities, particularly as services for the elderly tend to be minimal in rural areas, requiring them to move to large population centres or to Perth.
- 11.18 The Committee heard evidence that suggested that the country population and services to the country have significantly declined since the introduction of Commonwealth Government policies such as the Fringe Benefits Tax and National Competition Policy, which removed the incentive for the private sector to base a permanent workforce in country areas.
- 11.19 The Shire of Menzies, currently within the electorate of Eyre, is concerned that the likely merger of the electorates of Eyre and Kalgoorlie based upon the number of enrolled voters does not take into account the actual number of people that the two current MLAs are required to represent:

²⁶¹ Transcript of evidence of Cr Bob Neville, Deputy Mayor, Town of Port Hedland, October 30 2001, pp. 4-5.

“Another problem when dealing simply with the numbers of electors in an electoral district is that they don’t reflect the true number of people living and working in the area.

If we take the Menzies Shire for example; there are conservative estimates that twice as many people live in the shire area than is reflected on the Electoral Roll, this is because of “commute mining” or “fly-in, fly-out” as it is more commonly named.

A very quick glance at an Electoral Roll will reveal that the workers at these commute mine sites are not registered to vote where they work and spend most of the year and contribute to the wealth of Western Australia.

This fact should be included in formulas that are used to determine the distribution of seats.”²⁶²

11.20 Cr Peter Foote at the hearing in Tom Price stated:

“When I first arrived here, my town had 2 700 people; it now has less than 1 200. We are producing twice as much ore as we were then and we have half the population. That is the same in any mining community. In a mining community in which everybody goes back to Perth, one of the factors that has stopped the communities from expanding was the introduction of the federal fringe benefits tax. Everyone took advantage of that, and opted for a fly in fly out arrangement. I am involved in building mines. I am a surveyor, and I am involved in working and building these mines in my professional capacity. They are all going fly in fly out. They are not flying in and out of a local community, but to Perth. It is my contention that the tax laws - they are not state laws I know - but the tax laws make it more attractive for companies to do this rather than to house their employees here. Eventually, in 10 to 20 years, the community of Paraburdoo will be gone.”²⁶³

11.21 The Committee received a written submission from Mr Ken May:

“The rural areas of Western Australia suffer from a declining population, declining levels of services, increasing salinity and the

²⁶² Submission of the Shire of Menzies, dated October 18 2001, p. 2.

²⁶³ Transcript of evidence of Cr Peter Foote, Councillor, Shire of Ashburton, dated October 31 2001, p. 2.

after effects of policies designed to maximise profits for the wealthy but that minimise quality of life in the bush.

One notable example that I can refer to is the “fly in and fly out” policy.

In previous years, mining companies who exploited the wealth of our fair land were obliged to provide community facilities for their employees and their families and this was a vital source of income and regeneration for rural Australia.

The transient “fly in and fly out” system benefits nobody except the largely foreign shareholders of the big mining corporations and has left a trail of devastated rural communities in the bush.”

OBSERVATION

- 11.22 The Committee notes the concerns raised during the inquiry with regard to the effect of policies such as, the Fringe Benefits Tax, National Competition Policy, GST and State Agreement Acts and the practice of fly in fly out on rural and remote communities.

INDIGENOUS REPRESENTATION

- 11.23 The Committee acknowledges that it neither advertised in a way nor held hearings in a way that encouraged Aboriginal people to make submissions to the inquiry.
- 11.24 During the hearing held in Fitzroy Crossing, Hon Mark Nevill, former Member of the Legislative Council, put forward a proposal for the creation of a new electoral district to represent the widely dispersed Aboriginal communities in remote areas of the State:

“These massive electorates are not necessarily serviced by members. If you have one vote, one value and no weighting in the lower House - even in the Mining and Pastoral Region - you can get over the problem by having an Aboriginal person elected in what I would call the western desert block language group - that is; the central, western and northern deserts and even Wonkajonka and some of the areas south off Fitzroy Crossing who are all western desert block people. If an Aboriginal member was elected from that area, he could give the House a better view of how legislation should be changed to accommodate their interests. Those areas have some talented and smart people. They would surprise a lot of members in the House with their knowledge of the State law and that sort of thing, because

*they are dealing with it regularly. There is a strong community of interest with those people. They all have the same law. They move in circles in the same language group. There would be about 2 000 electors. They may not necessarily have a vote in the House, but they should have speaking rights on any Bill that they thought was going to affect them. I would even suggest they be given rights to delegate different people to speak on a particular Bill in the House. That person could be anyone - a lawyer on a criminal law matter, the person elected on a lot of other matter [sic]. In that way they would get what I would consider very appropriate representation.*²⁶⁴

- 11.25 There has been expressed some support for a system of indigenous representation within the Western Australian Parliament.
- 11.26 There are a number of examples worldwide. While countries such as Finland and New Zealand retain parliamentary seats for indigenous minorities, and Canada has created the Province of Nunavut with a majority indigenous population, it is not clear which, if any, method of indigenous representation is appropriate for Western Australia.

RECOMMENDATIONS

Recommendation of the Committee – Unanimous

Recommendation 15: The Committee recommends that a parliamentary inquiry be held to consider the effectiveness of the current representation of indigenous people in the Western Australian Parliament.

Recommendation of a Minority

Recommendation K: A minority of the Committee (Hon Giz Watson MLC) recommends that a parliamentary inquiry be held to consider the appropriateness and methodology for representation of indigenous people, including the possibility of entrenchment, in the Western Australian Parliament.

²⁶⁴

Transcript evidence of Hon Mark Nevill, October 29 2001, p. 4.

A RESIDENTIAL REQUIREMENT FOR ELECTED REPRESENTATIVES

11.27 A number of people who appeared before the Committee, particularly those in the Mining and Pastoral Region, expressed the view that elected representatives should live within their electorate.

11.28 Mr Larry Graham MLA, at the hearing in Port Hedland, stated:

“There is no requirement for an upper House member to have been to the region that they purport to represent. There is no requirement on upper House members to ever go to the region that they purport to represent. There is no requirement on an upper House member to even have an office in the region that they purport to represent. I know from my experience how my old political party looks at upper House seats. I suspect it is the same in all political parties; they are divvyed out on the basis of who is in what factional group, and there is a bit of a blur around the edges.

...

You should amend the Act [Electoral Amendment Act 1907] to require a residential requirement on members seeking election to the Mining and Pastoral Region, and I think a permanent residency for two year [sic] immediately prior to the election is a reasonable requirement to ask of someone.”²⁶⁵

PARLIAMENTARY SITTING TIMES

11.29 Noting the residential requirement issue above, the Committee believes that Parliament should restructure its sitting times to enable Members to spend more time in their electorates.

COMMENTS ON THE TIMING AND PROCESSES OF THE COMMITTEE’S INQUIRY

11.30 A common complaint from many witnesses at the public hearings held by the Committee was the very short notice that was given of the public hearings. Due to the time frame in which the Committee had to conduct the inquiry, often the advertisement placed in local newspapers to publicise a public hearing appeared less than a week before the actual hearing.

11.31 A number of people also advised Committee Members informally that they had not noticed the advertisement for the inquiry as it was mistaken, due to the

²⁶⁵ Transcript of evidence of Mr Larry Graham MLA, Member for Pilbara, October 30 2001, pp. 24-26.

advertisement's formal design, for a Government advertisement calling for public tenders.

11.31.1 Many people attending submission hearings complained of the poor and/or lack of suitable advertising. An example of some of the difficulties raised and suggestions heard are:

- Advertisements should not give the impression of being just another standard government advertisement.
- Making more use of local knowledge for country advertising is essential.
- Placing the advertisement outside the usual advertising section is another way to attract attention. In this case a large heading of 'One Vote One Value' would have been very effective.
- The use of e-mail advertising to local authorities needs to be followed up with a telephone call.
- Better use of the ABC and other radio broadcasting should be made, (for example aboriginal radio; the country hour which is listened to by most farmers and offers free advertising for community events; public notices).
- The time frame for these Committee hearings did not allow time for advertising in the small, locally produced monthly newspapers. These are universally read in most localities.
- Advertisements should have less formality in their wording.

Observations

11.32 **Hon Paddy Embry MLC made the following observations:**

11.32.1 In addition to the Chief Executive Officers, the Shire Presidents and Mayors need direct notification of upcoming hearings in their shires, preferably by telephone.

11.32.2 Advertising in colour or with a splash of colour would draw attention.

- 11.32.3 Advertisements with less formality in the wording would lead to a reduction in cost. This cost saving would enable the use of larger print and make a more effective advertisement.
- 11.33 Hons Jon Ford, Adele Farina, Kate Doust and Giz Watson MLCs observed that for this inquiry the local authorities were notified directly by letter and this was followed up by telephone.

RECOMMENDATION

Recommendation of the Committee - Unanimous

Recommendation 16: The Committee recommends that the Legislative Council review its standing committee advertising practices with a view to achieving greater flexibility and public participation.

Public friendly procedures for committee hearings

- 11.34 The Committee observed at a number of venues in the North West and Mid West of the State that some people who had earlier indicated a desire to make a submission to the Committee, had subsequently declined to appear as a witness after observing the hearing proceedings. Although not received in formal evidence, aboriginal people who attended the Fitzroy Crossing hearings intending to participate informed Members after the meeting that they had decided against participation as soon as they saw the way in which the room was set up. They had expected more of a discussion than a court style process. These people were significant leaders within the Kimberley Community and unlike many in the area were English speakers. They also suggested that to have useful input from aboriginals, the issues would need to be aired in advance in discussions over Aboriginal radio in language and a different format adopted for discussion.
- 11.35 The Committee is of the view that many potential witnesses may be intimidated by the perceived legalistic formality of parliamentary committee hearings.
- 11.36 Parliamentary committees may need to receive cultural training on how to best gather evidence from Aboriginal communities. Aboriginal radio may be the best method of raising interest amongst Aboriginal communities in a parliamentary inquiry.
- 11.37 With respect to the development of a more appropriate process for conducting public hearings in rural and remote areas, it may be of some value to give consideration to several of the recommendations of the Nunavut Electoral Boundaries Commission of

the Northwest Territories, Canada, which in 1997 held public hearings in remote regions of Canada in relation to the drafting of new electoral boundaries:

“Recommendations Regarding the Public Hearing Process

In order to prepare residents for public hearings, the Commission staff prepared plain-language tabloid-style flyers and had these distributed, in all appropriate languages, to the hamlet council offices in Nunavut.

The Commission was interviewed by CBC radio, TVNC and the print media in advance of the hearings. In addition, the Commission created and distributed a questionnaire to assist residents in the often intimidating process of making written submissions. We recommend that other Commissions follow this procedure.

Based on our experience, we have some suggestions to offer for increasing community involvement on similar future commissions.

- *Commissions should be given adequate time in which to conduct their work. Communities need time to disseminate and absorb the information and consider the question before being asked to react.*
- *Set up an effective distribution system for printed material, including schools.*
- *Prepare an audio-tape presentation and simulated interview in all appropriate languages. Distribute this as a public service announcement to local radio stations.*
- *Send copies of all information to high schools and Arctic College social studies classes.*
- *Commission staff should arrange for radio programs in each community and act as resource people for such programs.*
- *Ensure that information regarding hearings is posted on community cable TV channels as well as local bulletin boards.*

- *Ask regional airlines to carry print information in their seat pockets.*
- *Make best use of government computer links (North of 60 and HPDESK) for dialogue and dispensing of information.*
- *Community hearings should not be held in spring or summer.*
- *Make good use of knowledge of upcoming regional meetings and conferences.*²⁶⁶

11.38 The PGA noted in their submission that the Committee had not held any hearings in remote Aboriginal communities.²⁶⁷ The Committee acknowledges that there are many more towns and communities that the Committee would have liked to have held public hearings in had the Committee's capacity to travel to take evidence not been severely limited by the extremely short period of time it had in which to conduct this inquiry.

RECOMMENDATION

Recommendation of the Committee - Unanimous

Recommendation 17: The Committee recommends that the Legislative Council consider reviewing committee hearing proceedings with a view to adopting more informal and friendly procedures, particularly when hearings are held in rural and remote areas of the State.

SIGNIFICANT PROBLEMS WITH THE EQUAL VALUE OF VOTES IN THE LEGISLATIVE COUNCIL

11.39 This section represents the views of Hons Peter Foss, George Cash and Paddy Embry MLCs.

Electoral Act 1907 assumes equal value of votes within an electorate

11.40 The *Electoral Distribution Act 1947* already carries with it (in s6(2)) the concept of equality in the size of electorates once the vote weighting to country electorates has been established in accordance with s6(1).

²⁶⁶ Internet site: <http://www.electionsnwt.com/electoral.html>.

²⁶⁷ Submission by the Pastoralists and Graziers Association, dated November 7 2001, p. 3.

- 11.41 It is assumed that the vote of any voter within a district will be the same value as any other voter in that district and that each person will have only one vote and one ballot paper. This assumption is continued in the *Electoral Act 1907* Part IV (although not expressly stated) and section 190 establishes the offence of voting more than once in an election.
- 11.42 The Legislative Council has proportional voting with a single transferable vote. There is an elaborate process set out in Schedule 1 to the *Electoral Act 1907* to ensure that votes are counted so as to retain their value. In particular there is a process by which votes received by a candidate in excess of the quota required to be elected are transferred by transferring *ballot papers* at a reduced value (called the “transfer value”) so that the value of all the *ballot papers* transferred gives a value in total equal to the number of *votes* to be transferred.
- 11.43 It is very important to note that a *ballot paper* and a *vote* are distinguished in that ballot papers may represent *less* than one vote in value when transferred, but should not be worth more than one vote.²⁶⁸
- 11.44 Two witnesses – Hon Mark Nevill and Mr Graham Campbell²⁶⁹ have suggested that in the voting for the Mining and Pastoral Region, the votes of some electors were greater in value than one and the votes of others were less in value than one.

“The comment I want to make about that is that if that is the moral or principal tenet or position, the method of counting votes in the Legislative Council needs to change, because the votes are not equally weighted within a particular electorate.

The net effect of the counting system that is used - the transfer system of votes - was that a person in the Mining and Pastoral Region who voted for One Nation at the last election had a value of 1.26 votes. The value of the vote of anyone who voted for me at the last state election was 0.52 - just over half a vote. That is grossly unfair to anyone who voted for me.

There was a gross distortion and that cannot be allowed to stand. Allowing that position to persist would be turning one’s eye to something that corrupts the electoral votes.”²⁷⁰

²⁶⁸ *Electoral Act 1907* Schedule 1 Clause 4.

²⁶⁹ Transcript of evidence of Mr Graeme Campbell, member of the public, November 4 2001, p. 3.

²⁷⁰ Transcript evidence of Hon Mark Nevill, October 29 2001, p. 2.

Some terms and methods used

11.45 To understand this argument unfortunately requires an understanding of some of the terms and methods of voting and of how the processes evolved and the mathematical theory that has guided its development. See glossary.

A historical explanation of a seemingly complicated process

11.46 The concept of proportional voting with a single transferable vote has a history of about 200 years and in particular has been subject to development and use within Australia. It is often known as the Hare Clark system named after Thomas Hare, who proposed it, and Andrew Inglis Clark, a Tasmanian Member of Parliament and later Justice of the Supreme Court of Tasmania, who promoted it. It introduced the idea of the Droop quota (after Henry Richmond Droop an English mathematician). The Droop quota is to be found in Clause 3 of Schedule 1 to the *Electoral Act 1907*.

11.47 The best summary of the use of the single transferable vote is in *How to conduct an election by the single transferable vote* published by the Electoral Reform Society of Great Britain and Ireland. Essentially the idea is to give expression to the elector's intentions.

11.48 An early problem with the single transferable vote in multi-Member electorates using a quota to determine when a candidate is elected is that it is most unlikely that any candidate will obtain exactly a quota of votes. More than likely there will be excess. An early suggestion to resolve this was randomly to take ballot papers equal to the amount of excess and distribute them according to their second preference.

11.49 In a paper by Rt. Hon J Parker Smith appended to *Proportional Representation 1911* by John H Humphreys the process is explained as well as the low statistical probability that it would lead to unfairness.

11.50 Parker Smith states that the mathematical probability with a candidate who had 10,000 votes when the quota was 6,000 and from whose total 4,000 votes were drawn randomly, was such that neither B nor C would gain or lose more than 11 votes. Thus assuming say, that there are 2400 AB votes and 1600 AC votes by the quota method then by the random method:

11.50.1 It is even betting that the draw would yield between 2411 and 2389 AB votes;

11.50.2 The odds are 3 to 1 neither B nor C would gain or lose more than 20 votes, that is there would be between 2420 and 2380 AB votes;

11.50.3 The odds are 50 to 1 that neither would gain or lose more than 40 votes; and

- 11.50.4 The odds are 2000 to 1 that neither would gain or lose more than 60 votes; and
- 11.50.5 If the number of classes were larger or the number of votes to be drawn were smaller the effect would be much less.²⁷¹
- 11.51 However, people just did not like the chance involved no matter how small – and it had problems on a recount.
- 11.52 Humphreys therefore states the alternative - the single transferable vote at fractional value. This works as follows. You transfer all of A's *ballot papers* but distribute the value of the excess *votes* they represent in the proportion that the whole number of A's supporters is divided. Parker Smith goes on to say that this method is indisputably fair and avoids all uncertainty. (Note that *ballot papers* and *votes* become separate concepts).
- 11.53 He then examines whether it is worth the undoubted trouble to do this. He admits that if the votes were counted in a random order and the correct number of votes are randomly drawn from them, then mathematically the chances of any variance in result from the transfer value method is very small.
- 11.54 Historically, Parliaments have gone against chance in favour of accuracy – no matter how tedious. That has led to what we now have – the Gregory fractional transfer value. This is named after J B Gregory of Melbourne whose idea it was. Because one could not identify the particular ballot papers to transfer, the entire parcel was transferred at a fractional value.

The process

- 11.55 This method works well on the first transfer of votes and ballot papers but needs to be modified on subsequent transfers. Both the Proportional Representation Manual of the Proportional Representation Society of Australia and the handbook of the Electoral Reform Society of Great Britain and Ireland (Newland and Britton 1973) provide a comprehensive set of instructions for conducting an election by the single transferable preferential vote method. Both specify that when transferring a surplus arising from a prior transfer, only the last batch of *ballot papers* that gave rise to the surplus should be transferred at the transfer value. The number of *votes* transferred remains constant because the smaller number of *ballot papers* transferred are transferred at a higher value than if all the *ballot papers* were transferred. The divisor in each case is the total number of *ballot papers* to be transferred, thus giving a smaller divisor.

²⁷¹ Humphreys J, *Proportional Representation*, 1911, in a paper appended by Parker Smith J, pp. 337-9.

11.56 There are three reasons for this instruction:

11.56.1 It is possible to distinguish between the votes that elected the Member and the votes that caused the surplus. It is those in the last transfer that caused the surplus.

11.56.2 If you do not do it this way, you reintroduce an element of randomness, far more quixotic in its effect than merely drawing the ballot papers at random from the pile.

11.56.3 Because some of the ballot papers being transferred may already have a fractional value. As the process goes on increasingly small parcels of *ballot papers* with infinitesimal values would need to be transferred

Quixotic randomness

11.57 If you do not apply the formula only to that last set of votes transferred which leads to the excess in quota then the effect that a set of votes has will depend not on what the electors indicated in their voting papers, but on how many of the votes transferred are needed to make the quota. Even more extraordinary, the fewer votes are needed, the greater will be the departure from what those voters indicated in their ballot paper and the greater will be the influence of the persons who, for instance, have given their first preference to that candidate and who have successfully elected the person they voted for.

11.58 If you do apply it only to the last transfer then the votes of those electors will go in exactly the same way – no matter how many how or close their second choice is to the quota.

11.59 This effect is recognised in Schedule 1 to the *Electoral Act 1907* (see Clause 9 exception, Clause 11 and Clause 19). Each parcel of ballot papers from each source is treated separately and if a quota is obtained part way through a transfer then only the current parcel being transferred is completed and other parcels go to continuing candidates. The surplus is derived from that parcel.

Surplus can be identified

11.60 As mentioned in the previous paragraph, the *Electoral Act 1907* requires each parcel to be dealt with separately and any parcel that has not been started on when a quota is obtained is not part of the surplus and is dealt with in accordance with the wishes of those electors – not by reference to the other votes that the candidate has received.

- 11.61 The only ambiguity as to intention is with regard to those *ballot papers* in the parcel that leads to the quota being reached and exceeded. If it is merely reached then Clause 18 clearly deals with what happens with the *ballot papers* – they are set aside as finally dealt with.
- 11.62 The area of dispute in the Mining and Pastoral Region arises out of different interpretations of the combined effect of Clauses 7, 18 and 19 on the clauses that deal with subsequent transfers. It is not appropriate here to go into those arguments – however, the interpretation used by the WAEC is to apply the transfer value to all the *ballot papers* received by an elected candidate and transfer the surplus of the *votes* resulting from the final transfer *as if each ballot paper transferred was received as a full value vote*.
- 11.63 The effect of this is that some of Hon John Fischer MLC's *ballot papers* go from a received value of 0.1 to a full value for calculation and get transferred on at a value of 0.26582596. Instead of further reducing in value when passed on as part of the surplus they increase in value 2.5 times. The impact of the whole transaction is to give some voters an effective 1.4 to 1.8 votes and to reduce the effect of those who voted for Hon Mark Nevill MLC's to less than half.
- 11.64 Whether or not this is the correct way to interpret the *Electoral Act 1907*, it is certainly not fair, certainly not in accordance with principle and is easily amended to make it clear for any future elections.
- 11.65 The reason that it has not arisen in previous elections is that it made no difference until minor candidates secured substantial votes. Its impact is quite random and the voters of any candidate could be affected depending on the order of elimination. Its impact is to increase the value of votes in the surplus of major party candidates and to distribute them in accordance with the voting intentions of a medium party ticket vote – in this case One Nation at the cost of the voting intentions of an eliminated minor candidate.
- 11.66 The solution is suggested both in the handbook for conducting elections and counting preferential votes of the Electoral Reform Society of Great Britain and the United Kingdom and Ireland and in the *Proportional Representation Manual* of the Proportional Representation Society of Australia.
- 11.67 However, it is probably most easily followed from the account given by the major proponents of Hare Clark – the Tasmanians. The system followed in Tasmania for the House of Assembly since 1907 under the Hare Clark system is exactly this: *The 1985 Year Book of the Tasmanian House of Assembly* describes the process as follows:

“(viii) In the case of a candidate who reaches a quota through transferred votes, his surplus votes above the quota are divided by the number of voting papers transferred to him in the last transfer. The resulting fraction is the transfer value which is applied to voting papers he obtained in the last transfer which are then transferred to remaining unelected candidates according to the next available choice.”²⁷²

- 11.68 The system that the WAEC has used in the Legislative Council is the same as the Australian Electoral Commission (AEC) has used in the Senate.

OBSERVATION

- 11.69 If you believe in equality of value of votes then the current interpretation of the WAEC does not deliver equality between voters in the one region.

If you do not raise all ballot papers up to full transfer of infinitesimal value ballot papers

- 11.70 value before applying the new transfer value then you will have to account for ballot papers with smaller and smaller values. Already ballot papers are transferred at values that are so small that they are effectively worth NIL votes. If they are further transferred they will still need to be accounted for, but will be worth less and less every time. The two ways to eliminate this is to follow the rule suggested by the Electoral Reform Society of Great Britain and Northern Ireland and only deal with the last batch or do what the WAEC has done and raise them to full value so that they can dominate the surplus.
- 11.71 The justification for this method used by the WAEC is Clause 7 of Schedule 1. However, this has the effect of departing radically from ‘one-vote, one-value’ in that some *ballot papers* will escalate significantly in value and others will be virtually ignored.
- 11.72 A simple amendment to Clauses 7 and 18 of Schedule 1 of the *Electoral Act 1907* which can be achieved by amending the Electoral Amendment Bill 2001, is set out in Appendix 1. This would bring Western Australia in line with the writings by the Societies on the theory of the single transferable vote and in line with the Hare Clark system in Tasmania and give a fairer and more equal system of voting for the Legislative Council.

²⁷²

The 1985 Year Book of the Tasmanian House of Assembly, 1985, p. 67.

RECOMMENDATION**Recommendation of a Minority**

Recommendation L: A minority of the Committee (Hons Peter Foss, George Cash and Paddy Embry MLCs) recommends that a new clause be inserted into the Electoral Amendment Bill 2001 that amends Clauses 7 and 18 of Schedule 1 to the *Electoral Act 1907* as set out in Appendix 1.

PROBLEMS WITH PARTY PROCESSES

11.73 This section represents the view of Hons Peter Foss, George Cash and Paddy Embry MLCs.

11.74 A number of country witnesses complained that their representatives had supported the changes notwithstanding that country people were against it. It was certainly seen that it was a party matter where opinions were divided along party lines. Certainly this has been a criticism of the operation of the Senate as a States' house – in that, party discipline prevents it operating to protect even the States as a whole.

11.75 In evidence to the Committee at a hearing in Port Hedland, Mr Larry Graham MLA, Member for Pilbara, stated:

“Honourable members Ford, Farina and Doust have already signed a pledge that they will abide by the decisions made in their party room. I remind you, Mr Chairman, of the constitution and rules of the Australian Labor Party and what is called the candidate's pledge that the three members I referred to have signed: That you will be bound by national and state objectives, platforms and rules of the Australian Labor Party and by any decisions of the national conference, state conference, state executive and the administrative committee. You will on all occasions do your utmost to uphold the party's objects and platforms and in all questions before the Parliament vote as a majority of the parliamentary Labor Party may decide at a properly constituted caucus meeting; and on matters that are not subject - this is on national principles of organisation - to national platform, conference or executive decisions or state and territory equivalents, the majority decision of the relevant parliamentary Labor Party shall be binding upon all members of Parliament.”

Mr Chairman, you and the other members that I have referred to are not able to do anything other than support the position of the Government.”²⁷³

11.76 Mr Roger Colless, at a hearing in Broome, stated:

“Nobody voted the Labor Party in to give it a mandate to change the legislation. If you think they did, you should try again. Listen to the noises in the bush. Explain it very clearly and then go to the people with a referendum. That is the only way to change the Constitution - by a majority of the electors, not by their elected representatives who are bound to vote along party lines in fear of their jobs. Who is the brave MLA who will stand up and say, “I am sorry; I cannot vote for the motion because the members of my electorate do not want it”? Think about it.”²⁷⁴

11.77 Party discipline is an irreversible reality but some of its processes could be modified to improve proper representation.

11.78 One area of concern is the capacity of a small group to dominate the parliamentary process. If Cabinet operates on a voting rather than consensus basis then it is possible for a caucus of certain Members in Cabinet to dominate Cabinet. Once it has been decided in Cabinet, then its Members are obliged to maintain that position in the party room. If they vote in the party room then they can dominate it. Once the party room has decided then the governing party necessarily dominates at least the Assembly and the government Members of the Council.

11.79 The Liberal Party has adopted a series of rules that minimise the risk of this domination:

11.79.1 Cabinet operates by consensus – it does not vote.

11.79.2 In the party room, on matters where Cabinet has deliberated and its Members are obliged to vote as a bloc, Cabinet Members may not vote (that is, a measure needs a majority of the non Cabinet party Members to pass – this is probably the best protection against domination by the Executive).

11.79.3 In the Parliament, on any matter, a Member is entitled to vote against the party line **without any penalty** if the matter is of particular detriment or

²⁷³ Transcript of evidence of Mr Larry Graham MLA, Member for Pilbara, Tuesday October 30 2001, p. 2.

²⁷⁴ Transcript of evidence of Mr Roger Colless, member of the public, October 30 2001, p. 1.

benefit to his or her electorate, provided that the Member informs the party room before hand of his or her intention to do so.

RECOMMENDATION

Recommendation of the Committee - Majority

Recommendation 18: The Committee recommends by a majority (Hons Peter Foss, George Cash, Paddy Embry and Giz Watson MLCs) that all parties publicly adopt the following principles:

- i Cabinet operates by consensus – it does not vote.**
- ii In the party room, on matters where Cabinet has deliberated and its Members would be obliged to vote as a bloc, Cabinet Members may not vote (that is, a measure needs a majority of the non Cabinet party Members to pass – this is probably the best protection against domination by the Executive)**
- iii In the Parliament, on any matter, a Member is entitled to vote against the party line without any penalty if the matter is of particular detriment or benefit to his or her electorate, provided that the Member informs the party room before hand of his or her intention to do so.**

and that in due course the principles be enacted in legislation.

OPTIONAL VOTING FOR 16 AND 17 YEAR OLDS

11.80 Although not related to the Bills, and not directly within the scope of the inquiry's terms of reference, the Committee received a number of submissions advocating the introduction of optional voting for 16 and 17 year olds.

11.81 The Liberal Party of Australia (Western Australian Division) Inc expressed its opposition to the extension of the voting franchise to 16 year olds.²⁷⁵

11.82 In her submission to the Committee, Mrs Jacky Embry stated the following with regard to lowering the voting age to 16:

*“This is not a fair imposition to place on our children who are still growing and learning about themselves as they progress through puberty. They should be allowed to be ‘children’ for longer before the responsibilities of adulthood are thrust upon them.”*²⁷⁶

11.83 There has been some support for a system whereby young people aged 16 and 17 could enrol to vote on an optional basis, prior to compulsory voting at 18 years of age.

²⁷⁵ Submission of the Liberal Party of Australia (Western Australian Division) Inc, dated October 29 2001, p. 3.

11.84 While there is some dispute as to what should or should not constitute a legal age of majority, young people are working and contributing effectively to the community from 16 years of age. The option of enrolling to vote then extends the legal and social responsibilities to young people who decide they are capable and mature enough to make rational decisions about the direction of government. This in no way lessens the compulsion to vote at 18 years of age.

RECOMMENDATION

Recommendation of the Committee - Majority

Recommendation 19: The Committee by a majority (Hons Jon Ford, Kate Doust, Adele Farina and Giz Watson MLCs) recommends that that an inquiry be held into optional voting for 16 and 17 year olds.

²⁷⁶ Submission of Mrs Jacky Embry, dated October 30 2001, p. 2.

CHAPTER 12

OBSERVATIONS OF HON PADDY EMBRY MLC OF SUBMISSIONS RECEIVED AND HEARINGS HELD

- 12.1 There were 170 oral and written submissions, but that is a misleading statistic as many single submissions represented shires or groups of people. For example, the Country Shire Councils of WA (CSCA) produced one submission representing 112 rural and remote Local Governments. Similarly, the submission by the South Regional Council of WA represented 16 separate Shires, the submission by the City of Kalgoorlie represented 10 different Shires and the submission by the Pilbara Regional Council represented the four Pilbara Shires.
- 12.2 The people who live within those Shires and the ones who were represented by the One Nation, Liberal, Labor, PGA and WAFF submissions were pleased to have a spokesperson. The very short time allowed to produce submissions and the lack of proper advertising of the Committee meetings made it impossible for many concerned voters to be present for oral submissions or to write submissions.
- 12.3 The fact that so many rural people were represented, shows the strength of antagonistic feeling that so many country people have for one vote one value. (The demand is for greater representation rather than less). They downed tools and travelled hundreds of kilometres to be at the hearings, whereas city people, who could attend with less inconvenience, did not bother.
- 12.4 It is obvious that the issues do not impinge greatly on the life style of city people, as it did for example, when the Government tried to bring in the premium property tax on their home block. There was such an outcry that the Government backed down from such a politically unsound proposition.
- 12.5 The relative numbers of submissions, city and country, show that there is great feeling in the rural areas against one vote one value so we could hope that the Government once again listens to the voice of the people and drops this unfair proposed legislation.
- 12.6 The whole question of changing our electoral system and the ground swell of country dismay at the proposed changes has been brought about by the abuse of the principles of the Westminster system whereby voters in a district elect a Member to represent them in Parliament.

- 12.7 The primary abuse is the Party Room System. The Parliament is supposed to be the forum where discussion, debate and decisions are made. No longer is this the case. The public is now well aware that most Members vote ‘the party line’ rather than what may suit their electorate.
- 12.8 If we were to introduce a system that allowed greater use of referenda it would result in the public having a much better attitude towards their Member of Parliament and the greater involvement would instil confidence in the process of government. It need not be to the degree that exists in Switzerland, but certainly it should be greater than is presently practised in Australia.
- Total oral and written submissions: 170
 - Total oral submissions: 101
 - Total written submissions: 69
 - Total submissions bearing city addresses: 33, (10 oral, 23 written)
 - Total submissions bearing country addresses: 136, (90 oral, 40 written)
 - Of the 23 written submissions from the city addresses, seven were from combined groups, and represented more than one person.
 - Of the 40 written submissions from the country addresses, 21 were from combined groups and represented more than one person.
 - Of the 10 oral submissions from city addresses, six were from combined groups and represented more than one person.
 - Of the 90 oral submissions from country addresses, 34 represented groups and spoke for more than one person.
 - Of the 136 submissions from country addresses, 134 were against the introduction of ‘one vote, one value’.
 - Of the 33 submissions from city addresses, 13 were against the introduction of one vote one value, 16 supported the introduction of one vote one value as put forward by Labor and four supported the changes as advocated by The Greens (WA).
 - Three groups who were approached to make submissions declined because insufficient time had been allowed to do the task justice.

- 55 Country Shires were represented with submissions speaking against the introduction of ‘one vote, one value’.
- No City Shire presented a submission for or against the proposed legislation.
- Two oral submissions suggested that the North of the State secede from the South.
- Seven submissions believed that votes should be based on a proportion of the wealth earned rather than being based on numbers alone. Wealth was earned for the State in the rural areas, but was spent in the metropolitan area. An example is wheat growing.
- Many country submissions declared that there had been inadequate advertising. This reflected badly in the number of people who were able to attend the Committee hearings.
- Many country submissions stated that there had been insufficient time to prepare a submission properly.
- Many submissions called for a referendum on the subject of one vote one value. Of those who did not broach the subject, many replied in the affirmative once questioned. A few said ‘yes’ providing that country people alone could vote; a few were wary on the subject as they felt that city votes would monopolise the decision.
- Some submissions indicated that ‘fairness’ and ‘equity’ were what the Government was trying to promote, so it would be only ‘fair’ and ‘equitable’ for the city if government services were equalised.
- Lack of education appeared to play a major role in people leaving the country.
- Most country submissions stated that they were concerned about diminishing services in the country areas, particularly in education, health, policing, transport and government departments. This could only get worse if the one vote one value legislation became a reality.
- Many submissions declared that lack of representation impinged on the development of their communities.
- Some submissions pointed out that 99% of Western Australia was rural and held 1% of the population. This lack of voting power gave little or no representation for rural issues.

- Many submissions stated that changing electoral boundaries would create super sized electorates where there would be insufficient access to their Member of Parliament.

APPENDIX 1
AMENDMENTS PROPOSED BY THE LIBERAL PARTY

AMENDMENTS PROPOSED BY THE LIBERAL PARTY

ELECTORAL AMENDMENT BILL 2001 [1-1]

New Clause 6

Page 10, after line 21 - To insert the following new Clause -

“

6. Schedule 1 amended

Schedule 1 is amended by —

- (a) in section 7, line 4 deleting “a” and inserting instead “the last”; and
- (b) in section 18, line 4, after the words “equal to” deleting “the quota, all the ballot papers expressing those votes” and inserting instead —

“

or exceeds the quota, all the ballot papers expressing those votes, or in the case of the votes exceeding the quota, all those ballot papers expressing the quota other than those in the last transfer leading to the quota being exceeded

”

”.

APPENDIX 2
AMENDMENTS PROPOSED BY THE GREENS (WA)

AMENDMENTS PROPOSED BY THE GREENS (WA)

ELECTORAL AMENDMENT BILL 2001 [1-1]

Clause 4

2/4 Page 4, line 11 - To insert before “and” -

“ , the Agricultural Region, and Mining and Pastoral Region ”.

3/4 Page 4, line 12 - To delete “7” and insert instead -

“ 6 ”.

4/4 Page 4, line 14 - To delete the comma before “the” and insert instead -

“ and ”.

5/4 Page 4, lines 15 and 16 - To delete “the Agricultural Region and Mining and Pastoral Region”.

6/4 Page 4, line 25 to page 5, line 3 - To delete the lines and insert instead -

“

16F. Division required after each election

The State shall be divided into districts and regions in accordance with this Part as soon as practicable after the day that is 2 years after polling day for each general election for the Assembly held after the day on which section 4 of the *Electoral Amendment Act 2001* comes into operation.

”.

7/4 Page 5, lines 12 to 18 - To delete the lines.

8/4 Page 7, lines 15 to 17 - To delete the lines.

9/4 Page 8, line 9 - To delete “projection time” and insert instead -

“

day specified in section 16E, 16F or 16G(1) as the day as soon as practicable after which the division is to be carried out

”.

10/4 Page 8, line 17 - To delete “projection time” and insert instead -

“

day specified in section 16E, 16F or 16G(1) as the day as soon as practicable after which the division is to be carried out

”.

11/4 Page 8, line 23 - To insert after “regions” -

“

so that those regions generally reflect the recognized community of interest and landuse patterns in the State and

”.

12/4 Page 9, after line 15 - To insert the following lines -

“

(2) In subsection (1) —

“metropolitan area of Perth” means the part of the State that comprises —

- (a) the region that was, at the day specified in section 16E, 16F or 16G(1) as the day as soon as practicable after which the division is to be carried out, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959*; and
- (b) Rottnest Island.

”.

13/4 Page 9, after line 21 - To insert the following -

“ (b) land use patterns; ”.

Page 9, line 27 – To insert after “changes” –

“ but not so as to make a forward projection of elector numbers ”.

APPENDIX 3
LETTERS SENT TO ORGANISATIONS BY THE COMMITTEE
ON OCTOBER 8 2001

LETTERS SENT TO ORGANISATIONS BY THE COMMITTEE ON OCTOBER 8 2001

No	ORGANISATION
1.	Mr George Giudice, Convenor, Country Practitioners Committee, Law Society of Western Australia
2.	Mr Colin Nicholl, President, Western Australian Farmers Federation (Inc)
3.	Mr Barry Court, President, The Pastoralists and Graziers' Association of WA (Inc)
4.	Mr Guy Leyland, Executive Officer, Western Australian Fishing Industry Council (Inc)
5.	Cr Ian Mickel JP, President, Western Australian Municipal Association
6.	Chief Executive Officer, Albany City
7.	Mr Steve Deckert, Chief Executive Officer, Shire of Ashburton
8.	Mr Ian Bodill, Chief Executive Officer, Shire of Augusta-Margaret River
9.	Mr Greg Powell, Chief Executive Officer, Shire of Broome
10.	Chief Executive Officer, Shire of Bruce Rock
11.	Chief Executive Officer, Shire of Carnarvon
12.	Chief Executive Officer, Shire of Derby-West Kimberley
13.	Mr Michael Archer, Chief Executive Officer, Shire of Esperance
14.	Mr Rob Jefferies, Chief Executive Officer, Geraldton City
15.	Mr Ian Fletcher, Chief Executive Officer, Kalgoorlie-Boulder City
16.	Chief Executive Officer, Shire of Lake Grace
17.	Mr Vern McKay, Chief Executive Officer, Shire of Manjimup
18.	Mr M Howieson, Chief Executive Officer, Shire of Meekatharra
19.	Chief Executive Officer, Shire of Plantagenet
20.	Chief Executive Officer, Port Hedland Town
21.	Mr Trevor Ruland, Chief Executive Officer, Shire of Roebourne

No	ORGANISATION
22.	Chief Executive Officer, Shire of Wagin
23.	Mr Tony Brown, Chief Executive Officer, Shire of Wyndham-East Kimberley
24.	Mr John Mandy, Western Australian Chapter Secretary, Australasian Study of Parliament Group
25.	Ms Alison Gaines, Executive Director, Law Society of Western Australia
26.	Mr Phil Eaton, President, Western Australian Bar Association
27.	Professor Greg Craven, University of Notre Dame
28.	Professor William Ford, Dean of Law School, University of Western Australia
29.	Dr Bruce Stone, Head of Political Science Department, University of Western Australia
30.	Associate Professor, Les Jennings, , Head of Mathematics & Statistics Department, University of Western Australia
31.	Professor Louis Caccetta, Head of Mathematics and Statistics, Curtin University of Technology
32.	Professor David Black, School of Social Sciences, Curtin University of Technology
33.	Professor Ralph Simmonds, Dean, School of Law, Murdoch University
34.	Dr David Brown, School of Politics, Murdoch University
35.	Professor Kamran Eshraghian, Head of School of Engineering and Maths, Edith Cowan University
36.	Professor Maxwell Angus, Head of School, Education and Social Sciences, Edith Cowan University
37.	Mr Darryl Pearce, Chief Executive Officer, Noongar Land Council
38.	Mr Gerry Hayward, Chief Executive Officer, Yamatji Land and Sea Council
39.	Mr Brian Wyatt, Director, Goldfields Land Council (Inc)
40.	Mr Paddy Neowarra, Director, Kamali Land Council
41.	Mr Wayne Bergmann, Executive Officer, Kimberley Land Council

No	ORGANISATION
42.	The Chairman, Pilbara Aboriginal Land Council
43.	The Governing Committee, Miriuwunga & Gajerrong Heritage & Land Council
44.	Mr Damian McLean, Community Co-ordinator, Warburton Community (Inc)
45.	Mr Peter Wells, State Director, Liberal Party of Australia (WA Branch)
46.	Mr Bill Johnston, State Secretary, Australian Labor Party (WA Branch)
47.	Mr Jamie Kronborg, State Director, National Party of Australia (WA Branch)
48.	Mr Maz Fiannaca, State Director, One Nation
49.	Ms Margo Beilby and Mr Miguel Castillo, Co-Convenors, The Greens (WA Branch)
50.	Australian Democrats (WA Branch)

APPENDIX 4
ITINERARY

ITINERARY

TIME AND DATE	VENUE	TOWN
10.00am Sunday, October 21 2001	Kalgoorlie Town Hall	Kalgoorlie
3.00pm Sunday October 21 2001	St John Ambulance Subcentre	Esperance
10.00am Monday October 22 2001	Bruce Rock Town Hall	Bruce Rock
2.30pm Monday October 22 2001	Lake Grace Shire Hall	Lake Grace
9.00am Monday October 29 2001	Kununurra Shire Office	Kununurra
2.30pm Monday October 29 2001	Fitzroy River Lodge	Fitzroy Crossing
9.00am Tuesday October 30 2001	Broome Civic Centre	Broome
3.00pm Tuesday October 30 2001	Gratwick Hall in the Civic Centre	Port Hedland
9.00am Wednesday October 31 2001	Shire of Roebourne Council Chambers	Karratha
3.00pm Wednesday October 31 2001	Karijini Lodge Motel	Tom Price
11.00am Thursday November 1 2001	Carnarvon Lotteries House	Carnarvon
9.00am Friday November 2 2001	Geraldton Civic Centre	Geraldton
2.00pm Friday November 2 2001	Meekatharra Sporting Complex	Meekatharra
10.00am Sunday November 4 2001	Lesser Wagin Town Hall	Wagin
3.00pm Sunday November 4 2001	Jerramungup Town Hall	Jerramungup
9.00am Monday November 5 2001	Frost Pavilion	Mount Barker
2.30pm Monday November 5 2001	The Gallery, Manjimup Community Centre	Manjimup

APPENDIX 5
WITNESSES WHO APPEARED BEFORE THE COMMITTEE

LIST OF WITNESSES WHO APPEARED BEFORE THE COMMITTEE

NAME	DATE	No
Cr Doug Krepp, Council Representative, City of Kalgoorlie-Boulder	21.10.01	1
Mr Jim Fraser, Chief Executive Officer, Shire of Coolgardie	21.10.01	2
Mr Rodney Botica, member of the public, Kalgoorlie	21.10.01	3
Mr Barry Haase MP, Federal Member for Kalgoorlie	21.10.01	4
Mr Matt Birney MLA, Member for Kalgoorlie	21.10.01	5
Mr Angus Moffat, member of the public, Kalgoorlie	21.10.01	6
Mr Dick Thorp, member of the Esperance Chamber of Commerce	21.10.01	7
Mrs Alva Courtis, member of the public, Esperance	21.10.01	8
Ms Lee Mackin, member of the public, Esperance	21.10.01	9
Mrs Margaret Agnew, member of the public, Esperance	21.10.01	10
Mr Chris Siemer, member of the public, Esperance	21.10.01	11
Mr Ross Ainsworth MLA, Member for Roe	21.10.01	12
Mr Max Trenorden MLA, Member for Avon	21.10.01	13
Mr Brian Laycock, Representative, Shire of Quairading	22.10.01	14
Mr Brendon Grylls, Local Councillor, Bruce Rock	22.10.01	15
Mr Tom Richards, Past President, Shire of Quairading	22.10.01	16
Cr Stephen Strange, President, Shire of Bruce Rock	22.10.01	17
Mr Ian Brandenburg, member of the public, Lake Grace	22.10.01	18
Mrs Sylvia Brandenburg, member of the public, Lake Grace	22.10.01	19
Mr Alan Marshall, member of the public, Lake Grace	22.10.01	20

NAME	DATE	No
Mr Allan Holmes, member of the public, Lake Grace	22.10.01	21
Mr Trevor Delandgrafft, Vice President, Western Australian Farmers Federation, Lake Grace	22.10.01	22
Cr Doug Stewart, President, Shire of Lake Grace	22.10.01	23
Mr Robin Iffla, member of the public, Lake Grace	22.10.01	24
Mr Ross Chappell, member of the public, Lake Grace	22.10.01	25
Mr Philip Robb, Chief Executive Officer, Shire of Wyndham and East Kimberley	29.10.01	26
Hon Mark Nevill, Fitzroy Crossing	29.10.01	27
Cr Kevin Fong, President, Shire of Broome	30.10.01	28
Mr Roger Colless, member of the public, Broome	30.10.01	29
Cr Tom Vinnicombe, Councillor, Shire of Broome	30.10.01	30
Cr Bob Neville, Deputy Mayor, Town of Port Hedland	30.10.01	31
Mr Werner Jeuster, member of the public, Port Hedland	30.10.01	32
Mr Larry Graham MLA, Member for Pilbara	30.10.01	33
Cr Kevin Richards, President, Shire of Roebourne	31.10.01	34
Mr Gary Van Hoek, member of the public, Karratha	31.10.01	35
Mr Philip Baillie, member of the public, Karratha	31.10.01	36
Cr Brad Snell, Councillor, Shire of Roebourne	31.10.01	37
Mr Peter Hinchcliffe, member of the public, Karratha	31.10.01	38
Cr Peter Foote, Councillor, Shire of Ashburton	31.10.01	39
Mr Gary Clarke, Acting Chief Executive Officer, Shire of Ashburton	31.10.01	40

NAME	DATE	No
Cr Del Mills, President, Shire of Carnarvon	01.11.01	41
Mr Barry Scott, member of the public, Carnarvon	01.11.01	42
Mr Mark Hook, Chief Executive Officer, Shire of Shark Bay	01.11.01	43
Mr Robert Eddington, President, Shark Bay Chamber of Commerce	01.11.01	44
Mr Rod Sweetman MLA, Member for Ningaloo	01.11.01	45
Mr Jamie Edwards MLA, Member for Greenough	02.11.01	46
Mr Henry Van Der Ende, Chief Executive Officer, Shire of Mingenew	02.11.01	47
Hon Murray Criddle, MLC, Agricultural Region	02.11.01	48
Mr Ernest Cripps, member of the public, Geraldton	02.11.01	49
Mr Greg Hadlow, Chief Executive Officer, Shire of Meekatharra	02.11.01	50
Cr Thomas Hutchinson, Shire President, Meekatharra	02.11.01	51
Mr Horry Hunt, Councillor, Shire of Meekatharra	02.11.01	52
Mr Michael Parker, Chief Executive Officer, Shire of Wagin	04.11.01	53
Cr Jim Sullivan, Deputy President, Shire of Kulin	04.11.01	54
Mr Terence Noonan, member of the public, Wagin	04.11.01	55
Mr Ronald MacLean, member of the public, Wagin	04.11.01	56
Cr Peter Piesse, President, Shire of Wagin	04.11.01	57
Mr Anthony Hassell, Chairman, Central South Regional State Council	04.11.01	58
Mr Malcolm Edward, member of the public, Wagin	04.11.01	59
Mr Graeme Campbell, member of the public, Wagin	04.11.01	60
Mr Terry Waldron MLA, Member for Wagin	04.11.01	61

NAME	DATE	No
Mr Rick Dexter, member of the public, Wagin	04.11.01	62
Mr Ian Mickel, member of the public, Jerramungup	04.11.01	63
Mr Richard Swarbrick, member of the public, Jerramungup	04.11.01	64
Mr Gavin Davis, President Stirling Zone, Western Australian Farmers Federation, Jerramungup	04.11.01	65
Mr Ian Mangan, member of the public, Jerramungup	04.11.01	66
Mr Graham Davies, President Albany Zone, Western Australian Farmers Federation , Mt Barker	05.11.01	67
Mr Rob Stewart, Chief Executive Officer, Shire of Plantagenet	05.11.01	68
Cr Barbara Marshall, Councillor, Shire of Denmark	05.11.01	69
Mrs Wilma Ferguson, member of the public, Mt Barker	05.11.01	70
Mr David Ferguson, member of the public, Mt Barker	05.11.01	71
Cr Rodney Ebbett, Deputy President, Shire of Denmark	05.11.01	72
Mr Graham Maskell, member of the public, Mt Barker	05.11.01	73
Mr Harry Reeves, member of the public, Mt Barker	05.11.01	74
Mrs Jacky Embry, member of the public, Mt Barker	05.11.01	75
Mr Vern McKay, Chief Executive Officer, Shire of Manjimup	05.11.01	76
Mrs Rosa Moyle, member of the public, Manjimup	05.11.01	77
Mrs Lilian Aiken, member of the public, Manjimup	05.11.01	78
Mr Sydney Brunalli, member of the public, Manjimup	05.11.01	79
Mr John Bain, member of the public, Manjimup	05.11.01	80
Mr John Peos, member of the public, Manjimup	05.11.01	81

NAME	DATE	No
Mr Peter Gunson, member of the public, Manjimup	05.11.01	82
Mrs Tish Campbell, State Manager, Timber Communities Australia	05.11.01	83
Mr John Mitchell, member of the public, Manjimup	05.11.01	84
Mr Ken Rowe, member of the public, Manjimup	05.11.01	85
Mr Ewald Valom, member of the public, Manjimup	05.11.01	86
Mr Peter McKenzie, Vice President, Shire of Manjimup	05.11.01	87
Mrs Gail Duns, member of the public, Manjimup	05.11.01	88
Mr Colin Nichol, President, Western Australian Farmers Federation	07.11.01	89
Mr Andy McMillan, Director of Policy , Australian Farmers Federation	07.11.01	90
Mr Greg Boland, member of the public, Perth	07.11.01	91
Mr Malcolm Mummery, Vice President Electoral Reform Society of Western Australia	07.11.01	92
Ms Diane Guise MLA, Member for Wanneroo	07.11.01	93
Mr Ken May, member of the public, Perth	07.11.01	94
Mr Barry Court, President, Pastoralists and Graziers Association	07.11.01	95
Mr Tony Seabrook, Executive Member, Pastoralists and Graziers Association	07.11.01	96
Mr Geoff Gare, Communications Director, Pastoralists and Graziers Association	07.11.01	97
Mr Bill Johnston, State Secretary of the Australian Labor Party (WA Branch)	07.11.01	98
Professor Leslie Marchant, Visiting Professor, College of Theology, University of Notre Dame	07.11.01	99

NAME	DATE	No
Mrs Marie-Louise Wordsworth, member of the public, Perth	07.11.01	100
Mr Dan Sullivan MLA, Member for Mitchell	07.11.01	101

APPENDIX 6
WRITTEN SUBMISSIONS RECEIVED BY THE COMMITTEE

WRITTEN SUBMISSIONS RECEIVED BY THE COMMITTEE

FROM	DATE	No
Pilbara Regional Council	11.10.01	1
Mr Rodney Botica, Kalgoorlie	11.10.01	2
Ms Tammy Atkins, Kalgoorlie	15.10.01	3
Mr Tony Ford, Chief Executive Officer, Town of Port Hedland	18.10.01	4
Professor Greg Craven, Foundation Dean and Professor of Law, University of Notre Dame Australia	18.10.01	5
Mr Greg Boland, Cottesloe	18.10.01	6
Mr Greg Carter, Chief Executive Officer, Shire of Menzies	18.10.01	7
Mr Rino Borromei, Kalgoorlie	18.10.01	8
Mr Brett Nazzari, Kalgoorlie	18.10.01	9
Mr Tom O' Neil, Kalgoorlie	18.10.01	10
Mr Ian Fletcher, Chief Executive Officer, City of Kalgoorlie-Boulder	19.10.01	11
Shire of Laverton	19.10.01	12
Mr Jim Fraser, Shire of Coolgardie	19.10.01	13
Mr Patrick Hill, Laverton	19.10.01	14
Mr Graeme Fardon, Chief Executive Officer, Shire of Quairading	19.10.01	15
Mr Peter Fitzgerald, Chief Executive Officer, Shire of Broomehill	19.10.01	16
Mr and Mrs Brandenburg, Lake Grace	19.10.01	17
Mr Ross Atkins, Nedlands	19.10.01	18
Ms Jan Knight and Mr Peter Wilmot	19.10.01	19
Mr Bill Johnston, State Secretary, Australian Labor Party (WA Branch)	19.10.01	20
Mr Andy McMillan, Western Australian Farmers Federation	19.10.01	21

FROM	DATE	No
Shire of Mingenew	19.10.01	22
Mr FB Ludovico, Chief Executive Officer, Shire of Gnowangerup	19.10.01	23
Cr D Mills, JP, President, The Country Shire Councils' Association of Western Australia	19.10.01	24
Mr Steven Deckert, Chief Executive Officer, Shire of Ashburton	19.10.01	25
Mr Guy Thompson, Acting Chief Executive Officer, Shire of Roebourne	19.10.01	26
Mr Ian Stubbs, Acting Chief Executive Officer, Shire of Tambellup	19.10.01	27
Mr Colin James, Fremantle	19.10.01	28
Mr Maz Fiannaca, State Director, One Nation WA	22.10.01	29
Country Shire Councils' Association of Western Australia	22.10.01	30
Mr Damian McLean, President, Shire of Ngaanyatjaraku	22.10.01	31
Mr and Mrs Harkness	22.10.01	32
Mr Stewart Jackson, The Greens (WA)	23.10.01	33
Cr Gordon Davidson, Shire President, Shire of Dumbleyung	24.10.01	34
Mr Noel Welsh, Acting Chief Executive Officer, Shire of Donnybrook	25.10.01	35
Ms Lilian Aiken, Manjimup	29.10.01	36
Mr Peter Wells, State Director, Liberal Party of WA	29.10.01	37
Mr B Golding, Chief Executive Officer, Shire of Dandaragan	29.10.01	38
Mrs Jacky Embry, Cape Riche	30.10.01	39
Mr Gordon Payne, Fremantle	31.10.01	40
Mr John Bain, Bunbury	01.11.01	41
Mr Jonathan Throssell, Chief Executive Officer, Shire of Derby/West Kimberley	01.11.01	42

FROM	DATE	No
Mr Rob Stewart, Chief Executive Officer, Shire of Plantagenet	02.11.01	43
Hon Arthur Tonkin, Warwick	02.11.01	44
Ms Meera Finnigan, Fremantle	02.11.01	45
Ms Ruth Ellis, Beaconsfield	03.11.01	46
Ms Karen Bessel Browne, Wagin	03.11.01	47
Mr Daniel Shane O'Sullivan, Hamilton Hill	05.11.01	48
Mr P Durtanovich, Chief Executive Officer, Shire of Denmark	07.11.01	49
Mr Allan Ralph, Bullcreek	04.11.01	50
Mr Greg Powell, Chief Executive Officer, Shire of Broome	07.11.01	51
Pastoralists and Graziers Association	07.11.01	52
Mr Ken May, Lesmurdie	07.11.01	53
Mr Colin Nicholl, General President, Western Australian Farmers Federation – Supplementary Submission	07.11.01	54
Mr Malcolm Mummery, Shenton Park	07.11.01	55
Professor Leslie Marchant, University of Notre Dame	07.11.01	56
Mr Graham Hawkes, Woodbridge	08.11.01	57
Ms Betty Brown, Wagin	09.11.01	58
Mr Gerald Hitchcock, Fremantle	09.11.01	59
Ms Val Shearer, Kojoneerup	09.11.01	60
Mr and Mrs Cail, Kalannie	09.11.01	61
Mr Robert Johnstone, Albany	09.11.01	62
Australian Liquor, Hospitality and Miscellaneous Workers Union	09.11.01	63
Country Shire Councils' Association, Central Ward	09.11.01	64

FROM	DATE	No
Electoral Reform Society of Western Australia	07.11.01	65
Mr and Mrs McDougall, Katanning	11.11.01	66
Mr and Mrs Neilsmith, Arthur River	12.11.01	67
Ms Keetha Wilkinson, Kalgoorlie	12.11.01	68
Mr P Ensor, Albany	12.11.01	69

APPENDIX 7
COMPARATIVE ELECTORAL ENROLMENT STATISTICS FOR LEGISLATIVE
ASSEMBLY ELECTORAL DISTRICTS AS AT FEBRUARY 7 1994 AND
JUNE 30 2001

Legislative Assembly
COUNTRY AREA ENROLMENT STATISTICS

District	Enrolment 7.2.1994	Variation From Quotient	Enrolment 10.2.2001	Variation From Quotient	Enrolment 30.6.2001	Variation From Quotient	% change in enrolment 7.2.1994 to 30.6.2001
Albany	12,191	2.55%	14,352	6.56%	14,377	5.68%	17.93%
Avon	12,375	4.10%	13,469	0.00%	13,660	0.41%	10.38%
Bunbury	12,206	2.68%	13,655	1.38%	13,711	0.78%	12.33%
Burrup	11,026	-7.25%	10,835	-19.56%	10,759	-20.92%	-2.42%
Collie	12,863	8.21%	13,507	0.28%	13,577	-0.20%	5.55%
Darwinville	10,978	-7.65%	17,185	27.59%	17,720	30.25%	61.41%
Eyre	10,490	-11.76%	9,443	-29.89%	9,412	-30.82%	-10.28%
Geraldton	12,285	3.34%	11,843	-12.07%	11,908	-12.47%	-3.07%
Greenough	11,502	-3.24%	14,392	6.85%	14,538	6.86%	26.40%
Kalgoorlie	11,368	-4.37%	13,006	-3.44%	13,036	-4.18%	14.67%
Kimberley	10,735	-9.69%	13,463	-0.04%	13,507	-0.72%	25.82%
Mandurah	10,892	-8.37%	14,141	4.99%	14,309	5.18%	31.37%
Merredin	13,266	11.60%	12,712	-5.62%	12,560	-7.68%	-5.32%
Mitchell	11,982	0.80%	17,389	29.10%	18,046	32.65%	50.61%
Moore	11,912	0.21%	12,570	-6.67%	12,773	-6.11%	7.23%
Murray-Wellington	12,563	5.68%	14,531	7.88%	14,742	8.36%	17.34%
Ningaloo	10,738	-9.67%	10,127	-24.81%	10,275	-24.47%	-4.31%
Pilbara	10,490	-11.76%	10,194	-24.32%	10,392	-23.61%	-0.93%
Roe	12,553	5.60%	13,547	0.58%	13,514	-0.67%	7.66%
Stirling	11,976	0.75%	13,876	3.02%	14,055	3.31%	17.36%
Vasse	12,286	3.35%	16,966	25.96%	17,366	27.65%	41.35%
Wagin	13,244	11.41%	12,739	-5.42%	12,734	-6.40%	-3.85%
Warren-Blackwood	13,490	13.48%	15,845	17.64%	15,936	17.14%	18.13%
Total	273,411		309,787		312,907		14.45%
	Quotient	11,887	Quotient	13,469	Quotient	13,605	

Note: The date 7.2.1994 is significant because it is the date on which the quotients for the present electoral boundaries were determined for the last Division of the State.

METROPOLITAN AREA ENROLMENT STATISTICS

District	Enrolment 7.2.1994	Variation from Quotient	Enrolment 10.2.2001	Variation from Quotient	Enrolment 30.6.2001	Variation from Quotient	% change in enrolment 7.2.1994 to 30.6.2001
Alfred Cove	23,362	4.43%	24,717	-4.90%	24,938	-5.14%	6.75%
Armadale	23,369	4.46%	25,712	-1.08%	25,894	-1.50%	10.80%
Ballaajura	22,322	-0.22%	27,974	7.63%	28,126	6.99%	26.00%
Bassendean	23,784	6.32%	25,209	-3.01%	25,392	-3.41%	6.75%
Belmont	23,885	6.77%	25,740	-0.97%	26,155	-0.51%	9.50%
Carine	23,238	3.88%	24,928	-4.09%	24,964	-5.04%	7.43%
Churchlands	23,356	4.41%	23,877	-8.14%	23,900	-9.09%	2.33%
Cockburn	20,847	-6.91%	26,729	2.84%	27,110	3.12%	30.04%
Cottesloe	22,527	0.70%	24,767	-4.71%	24,990	-4.94%	10.93%
Darling Range	23,275	4.04%	26,003	0.04%	26,220	-0.26%	12.65%
Fremantle	22,481	0.49%	24,410	-6.09%	24,650	-6.23%	9.65%
Girrawheen	22,652	1.26%	23,320	-10.28%	23,623	-10.14%	4.29%
Hillarys	22,674	1.36%	27,478	5.72%	27,542	4.77%	21.47%
Innaloo	23,106	3.29%	25,267	-2.79%	25,668	-2.36%	11.09%
Joondalup	20,513	-8.30%	29,490	13.46%	29,859	13.58%	45.56%
Kingsley	22,268	-0.46%	25,784	-0.80%	25,774	-1.96%	15.74%
Maylands	22,951	2.60%	24,797	-4.60%	25,241	-3.99%	9.98%
Midland	22,937	2.53%	26,647	2.52%	26,840	2.10%	17.02%
Murdoch	22,106	-1.18%	24,149	-7.09%	24,176	-8.04%	9.36%
Nedlands	22,954	2.61%	23,729	-8.71%	23,694	-9.87%	3.22%
Nollamara	22,867	2.22%	24,001	-7.66%	24,218	-7.88%	5.91%

District	Enrolment 7.2.1994	Variation From Quotient	Enrolment 10.2.2001	Variation From Quotient	Enrolment 30.6.01	Variation From Quotient	% change in enrolment 7.2.1994 to 30.6.01
Peel	19,056	-14.82%	31,460	21.04%	32,327	22.97%	69.64%
Perth	21,120	-5.59%	22,534	-13.30%	22,938	-12.75%	8.61%
Riverton	23,106	3.29%	24,247	-6.71%	24,360	-7.34%	5.43%
Rockingham	21,062	-5.85%	23,875	-8.14%	23,923	-9.00%	13.58%
Roleystone	22,061	-1.38%	26,302	1.19%	26,614	1.24%	20.64%
South Perth	22,811	1.97%	23,964	-7.80%	24,189	-7.99%	6.04%
Southern River	20,663	-7.63%	31,638	21.72%	32,471	23.52%	57.15%
Swan Hills	21,804	-2.53%	29,000	11.57%	29,713	13.02%	36.27%
Thornlie	22,948	2.58%	24,805	-4.57%	24,856	-5.45%	8.31%
Victoria Park	23,435	4.76%	24,859	-4.36%	25,344	-3.59%	8.15%
Wanneroo	19,153	-14.38%	37,900	45.82%	39,383	49.81%	105.62%
Willagee	23,071	3.13%	23,974	-7.76%	24,241	-7.79%	5.07%
Yokine	22,831	2.06%	24,435	-5.99%	24,496	-6.82%	7.29%
Total	760,595		883,721		893,829		17.52%
	Quotient	22,370	Quotient	25,992	Quotient	26,289	

Note: The date 7.2.1994 is significant because it is the date on which the quotients for the present electoral boundaries were determined for the last Division of the State.